



N A R U C
National Association of Regulatory Utility Commissioners

February 11, 2013

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: *Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07- 135; Developing a Unified Intercarrier Compensation Regime, CC Dkt No. 01-92; Rules and Regulations Implementing the Truth in Caller ID Act of 2009, WC Dkt No. 11-39*

Dear Chairman Genachowski:

On February 6, 2012, nine months after the National Association of Regulatory Utility Commissioners' (NARUC) first resolution¹ seeking FCC enforcement action to eliminate rural call completion problems,² the agency commendably released a declaratory ruling confirming "that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way." It also noted that there would be penalties for carriers that did not comply with these obligations. That ruling issued more than six months AFTER the FCC recognized that "call completion" problems were increasing³ and more than a year after its initial November 2010 meeting with the National Telephone Cooperative Association discussing this issue.

¹ NARUC has recently passed two resolutions on this issue. The July 20, 2011 "Resolution on Federal-State Joint Efforts to Address and Resolve Call Termination Issues," specifically encourages the FCC to reaffirm "that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way." A subsequent July 25, 2012 "Resolution Addressing Rural Call Termination Issues" urges the FCC to address current call termination issues through the remedies outlined in the February 6, 2012 FCC Declaratory Ruling. Both are appended to this letter.

² See, *New Year Solutions for Rural Call Completion Problems*, a January 5, 2012 FCC Blog entry by then Wireline Competition Bureau Chief Sharon Gillett and then FCC Public Safety and Homeland Security Bureau's, available online at: <http://www.fcc.gov/blog/new-year-solutions-rural-call-completion-problems>, noting:

"Local phone providers in rural areas have reported an alarming increase in complaints from customers that long distance calls and faxes are not reaching them. Other complaints include poor call quality and incorrect caller ID information . . . It's a persistent and ongoing concern affecting 80% of rural carriers recently surveyed . . . This can have dire consequences. Small businesses lose customers who get frustrated when their calls don't go through. Urgent long distance calls from friends or family are misidentified on caller ID and not answered. Prescriptions faxed to a pharmacy fail to transmit. . . . [T]he problem appears to be occurring in rural areas where long distance carriers normally pay higher-than-average charges to the local telephone company to complete calls . . . To minimize these charges, some long-distance carriers use third-party "least-cost routers," which attempt to connect calls to their destination at the lowest cost possible. Sometimes, however, the calls appear not to be connecting at all."

³ As a January 2012 letter from 24 Senators points out – rural carriers have reported "a staggering 2,000 percent increase in complaints between April 2010 and March 2011 from consumers who have experienced calls that fail to complete, are delayed, have poor voice quality, lack correct call ID information, or where the originating carrier simply refuses to place calls to certain rural areas."

Over two years have passed since the Commission was alerted to the dramatic increases in call completion problems. Although the declaratory ruling stated that violators could face cease-and-desist orders, forfeiture, license revocations and fines of up to \$1.5 million, no orders, forfeitures or fines have been issued.

Last September, almost five months ago, NARUC asked the FCC to “drop the hammer.” A written *ex parte* from the Chair of the NARUC Communications Committee urged the FCC to: “expeditiously identify a provider or providers that have not resolved practices that result in call termination issues identified in the February 6, 2012, Declaratory Ruling and take appropriate and swift action, including imposing the penalties outlined . . . Apparently, those non-compliant carriers – which NECA’s May 2012 survey indicates have not been deterred by the FCC’s February warning – need to see actual enforcement actions with significant consequences before they will modify their behavior.”⁴

On this, the one year anniversary of the declaratory ruling, the undersigned members of NARUC⁵ call on the FCC to take immediate action. After more than a year of ongoing investigations, it is not unreasonable to expect enforcement activity in the face of continued and arguably increasing problems.

We understand the FCC is currently considering other common sense actions to assist enforcement efforts, e.g., requiring carriers to report call completion data to assist the agency in targeting enforcement activities, including possibly reporting whenever a carrier uses a least cost router that provides call termination service below the total ICC charges in a local calling area and/or requiring carriers to provide data on received call completion complaints. Getting data to help target additional non-compliant carriers is a good thing, but it cannot substitute for enforcement.

This is not a new or insignificant problem.⁶ This is a serious issue that affects consumers/businesses at both ends of an incomplete call. As the FCC has noted time and again - “the ubiquity and reliability of the nation’s telecommunications network is of paramount importance to the explicit

⁴ See, *Letter from NARUC Communications Committee Chair John Burke to FCC Chairman Julius Genachowski*, September 26, 2012, available online at: <http://apps.fcc.gov/ecfs/document/view?id=7022022333>.

⁵ NARUC is recognized by Congress in several statutes, and consistently by the Courts, as the proper entity to represent the collective interests of State commissions. See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where this Court explains “Carriers, to get the cards, applied to...(NARUC), an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the “bingo card” system”).

⁶ In a 2007 declaratory ruling, the FCC clarified that carriers are prohibited from blocking, choking, reducing or restricting traffic in any way, including to avoid termination charges. See *2007 Call Blocking Declaratory Ruling*, 22 FCC Rcd 11629, 11631, paras. 1, 6 (clarifying that carriers cannot block interexchange calls that terminate with certain local exchange carriers (LECs) as a form of self help to resolve disputes concerning the access rates of those LECs); see also *Blocking Interstate Traffic in Iowa*, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987) (denying application for review of Bureau order, which required petitioners to interconnect their facilities with those of an interexchange carrier in order to permit the completion of interstate calls over certain facilities). In September 2011, the Commission created the Rural Call Completion Task Force to address and investigate the growing problem of calls to rural customers that are being delayed or failing to connect. On October 18, 2011, the Rural Call Completion Task Force held a workshop to identify causes of and discuss potential solutions. See *Workshop Public Notice*, 26 FCC Rcd 14351. The workshop can be viewed at: <http://www.fcc.gov/events/rural-call-completion-workshop>.

goals of the Act”⁷ Assuring that carriers actually complete calls is the FCC’s *Raison d’être*. *It is not just an inconvenience for many of the nation’s rural consumers; it also has obvious public safety implications.*⁸

The declaratory ruling was a commendable first step. The ongoing effort to collect information to identify additional non-compliant carriers is another common sense step.

However, the time to impose real costs for non-compliance with the January 2012 ruling is now.

As NTCA noted in its recent December 2012 letter:

“[D]emonstrative and decisive action [is needed] to avoid catastrophic consequences and further economic injury resulting from call failures. As a point of comparison, we note that when AT&T, Google, and Apple had disputes over voice communication connectivity on the iPhone in the summer of 2009, the Commission sent public letters of inquiry within weeks to the relevant parties. Similarly, it took only weeks in 2005 for the Commission to leap into action and resolve a dispute over alleged blocking of VoIP calls. Urgency of a nature that the Commission has thus previously invoked is warranted here too, and it is essential to move quickly now beyond the continuing “triage” of call failures on a one-off basis.” {emphasis added}

States have action directed at this issue.

But in this case, FCC *enforcement action* is required to correct the problem.

NARUC commends and thanks the FCC, and in particular the FCC staff for efforts thus far, but the undersigned NARUC commissioners urge the FCC to take the decisive steps necessary within the next several weeks to see that rural consumers and businesses do not face continuing disconnection from the rest of America. Additional data collections that might help identify additional non-compliant carriers are welcome, but are no substitute for immediate enforcement of the rules outlined in the January 2012 declaratory ruling.

NARUC looks forward to continuing to work with the Commission on this problem. If you have questions about this letter, please do not hesitate to contact any of the undersigned or James Bradford Ramsay, NARUC’s General Counsel at 202.898.2207 or jramsay@naruc.org.

Thank you for your attention to this matter.

⁷ *In the Matter of Developing an 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, at ¶ 9, Adopted: February 6, 2012, available online at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0207/DA-12-154A1.pdf.

⁸ See, *Despite Potential for Tragedy, Rural Call Completion Problem Continues*, 5/18/12 at 11:51 AM by Joan Engebretson, noting: “It could be “only a matter of time” before life is lost as a result of a call not completing to a rural area, states a letter from Pine Drive Telephone Company, a small Colorado local telephone company, to the Colorado Public Utilities Commission shared with Telecompetitor. Accompanying the letter is a statement from a Pine Drive Telephone Company customer, who is one of nine volunteer local coordinators for the Colorado Search and Rescue Board, and who could not be reached by a statewide coordinator after multiple attempts for a period of several hours during a recent incident.” The full article is available online at: <http://www.telecompetitor.com/despite-potential-for-tragedy-rural-call-completion-problem-continues/>.

Sincerely,

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*cc: The Honorable Robert McDowell, Commissioner
The Honorable Mignon Clyburn, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
The Honorable Ajit Pai, Commissioner
Zachary Katz, Chief of Staff, Office of the Chairman
Michael Steffen, Legal Advisor, Office of the Chairman
Christine D. Kurth, Policy Director & Wireline Counsel, Office of Commissioner McDowell
Angela Kronenberg, Wireline Legal Advisor, Office of Commissioner Clyburn
Priscilla Delgado Argeris, Legal Advisor, Office of Commissioner Rosenworcel
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Appendix A – NARUC’s July 2012 “Resolution Addressing Rural Call Termination Issues”

WHEREAS, On July 20, 2011, the NARUC Board of Directors adopted a Resolution on Federal/State Joint Efforts to Address and Resolve Call Termination Issues; *and*

WHEREAS, That resolution encouraged the Federal Communications Commission (FCC) to reaffirm its decision in its Call Blocking Declaratory Order, “that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way;” *and*

WHEREAS, That resolution encouraged the FCC to expand its earlier finding that all providers comply with industry standards and best practices when routing traffic thereby not interfering with the quality of the transmission; *and*

WHEREAS, That resolution also encouraged the FCC and State commissions to take all appropriate actions to protect consumers by immediately addressing the call termination issues that exist; *and*

WHEREAS, On October 18, 2011, the FCC convened a workshop to address rural call routing and call termination issues; *and*

WHEREAS, Participants in that workshop described the rural call termination issues as serious, widespread, and threatening public safety, homeland security, and consumer welfare in rural America; *and*

WHEREAS, On February 6, 2012, the FCC’s Wireline Competition Bureau took much needed action when it released a Declaratory Ruling addressing rural call termination issues; *and*

WHEREAS, The Declaratory Ruling stated that it is an unjust and unreasonable practice, in violation of section 201 of the Act, “for a carrier that knows or should know that it is providing degraded service to certain areas to fail to correct the problem or to fail to ensure that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately;” *and*

WHEREAS, The Declaratory Ruling made clear that section 503(b)(2)(B) of the Telecommunications Act authorizes the FCC to assess forfeitures of up to \$150,000 for each violation or each day of a continuing violation, up to a statutory maximum of \$1,500,000 for a single act or failure to act; *and*

WHEREAS, In April 2012, after the release of the Declaratory Ruling, the National Exchange Carrier Association (NECA) conducted a test call project to assess the status of the rural call termination issues; *and*

WHEREAS, NECA originated 7,400 test calls in 30 States terminating to test lines in 40 States; *and*

WHEREAS, Test lines were located in both rural and non-rural locations; *and*

WHEREAS, On May 21, 2012, NECA filed an ex-parte letter stating that members of various associations representing rural telephone carriers had met with staff from the FCC's Enforcement Bureau and Wireline Competition Bureau to discuss the results of NECA's recent test call project; *and*

WHEREAS, The test call results showed call termination issues in rural areas were still at unacceptable levels, although overall call termination and call quality problems did improve since NECA's previous test call project conducted in September 2011; *and*

WHEREAS, Overall incompleteness rates for calls placed to rural test lines remained 13 times higher than the incompleteness rates for calls placed to non-rural test lines; *and*

WHEREAS, Of the 100 rural telephone lines tested, one-in-five experienced incompleteness rates of 10 percent or greater and one-in-three had a "total issues" (call failure, poor voice quality, or delayed set-up) rate greater than 20 percent; *and*

WHEREAS, The rural call termination issues remain serious, widespread, and continues to threaten public safety, homeland security, and consumer welfare in rural America; *and*

WHEREAS, Rural call termination issues continue, and it appears that some carriers are not taking the Declaratory Ruling seriously; *and*

WHEREAS, The call termination issues seem unlikely to be resolved unless and until a provider that has failed materially and repeatedly to route calls to destinations as sought by originating callers faces serious consequences for such failures; *now, therefore be it*

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2012 Summer Committee Meetings in Portland, Oregon, commends the FCC for its efforts over the past year to resolve the rural call termination issues, in particular, with the release of the Declaratory Ruling, on February 6, 2012; *and be it further*

RESOLVED, That the FCC should continue its work to expeditiously identify providers that have not resolved practices that result in call termination issues identified in the February 6, 2012, Declaratory Ruling; *and be it further*

RESOLVED, That upon identifying providers that are not in compliance with the February 6, 2012, Declaratory Ruling, the FCC should take appropriate and swift action consistent with the penalties set forth in the February 6, 2012, Declaratory Ruling in order to restore public safety, homeland security, and consumer welfare in rural America.

*Sponsored by the Committees on Telecommunications and on Consumer Affairs
Adopted by the NARUC Board of Directors July 25, 2012*

Appendix B - NARUC's July 2011 "Resolution on Federal/State Joint Efforts to Address and Resolve Call Termination Issues"

WHEREAS, The Public Switched Telephone Network (PSTN) is a series of interconnected networks operated by multiple providers; and

WHEREAS, The value of the PSTN requires the ability of end users to make and receive calls regardless of their location; and

WHEREAS, The Federal Communications Commission (FCC) has unequivocally stated in its Declaratory Ruling and Order, WC Docket No. 07-135, DA 07-2863, released June 28, 2007 at paragraph 6, "that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way"; and

WHEREAS, The FCC has also acknowledged in footnote 20 of the Call Blocking Declaratory Order that exceptions to its no-blocking and no-call choking policy are permitted only under "rare and limited circumstances;" and

WHEREAS, The FCC has in recent years taken prompt steps to address perceived or actual blocking of calls and other problems associated with the routing and transmittal of traffic across a wide variety of networks, including Voice over Internet Protocol calls and Internet access; and

WHEREAS, The failure to complete calls is having a significant negative impact on consumers and interstate commerce throughout the country; and

WHEREAS, A recent letter sent by various Rural Trade Associations to the FCC's Investigations and Hearings Division of the Enforcement Bureau outlines recent and continuing call completion issues and notes that from prior to 2008 to mid-April 2011, over 10,000 consumer call completion complaints have been reported to the Rural Trade Association members with the number of complaints increasing over 2,000% during the April 2010 to March 2011 time frame; and

WHEREAS, A growing number of State commissions have begun their own investigations of the call termination issues that have been raised in each of their States; and

WHEREAS, One Hundred and Seventy Six rural incumbent local exchange companies in 35 States have reported having call termination issues for both voice calls and faxes; and

WHEREAS, The call termination issues manifest themselves in several ways such as, but not limited to, the calling party hears ringing but the called party hears nothing, the called party's phone rings but hears dead air when the call is answered, the calling party hears a fast busy, where there are unusually long call set-up times or there is the use of a call intercept messages, or the called party receives a display of incorrect Caller ID information; and

WHEREAS, Suspected causes of the reported call completion issues include, but are not necessarily limited to, originating carriers failing to ensure transiting providers they route traffic to for termination comply with industry standards and guidelines, the improper use of least cost routing arrangements where routing tables are not updated and/or where certain entities specifically decline to terminate traffic to generally higher cost rural areas; and

WHEREAS, To date, there has been no demonstration by providers or other entities that the call termination issues fit within the "rare and limited" exceptions to the FCC's no-call blocking and no-call choking policies enunciated in the Call Blocking Declaratory Order; and

WHEREAS, Call termination issues create negative public interest by adversely impacting State and interstate commerce, reducing State and federal tax revenues, degrading the quality of the PSTN, and adding risks to public health and safety; and

WHEREAS, Call termination issues are antithetical to the public interest by creating confusion, isolation and frustration on the part of called parties and calling parties; now, therefore be it

RESOLVED, That the Board of Directors of the National Association of Regulatory Utility Commissioners, convened at its 2011 Summer Committee Meetings in Los Angeles, California, encourages the FCC to reaffirm its decision in its Call Blocking Declaratory Order, "that no carriers, including interexchange carriers, may block, choke, reduce or restrict traffic in any way"; and be it further

RESOLVED, That the FCC expand its earlier finding that all providers comply with industry standards and best practices when routing traffic thereby not interfering with the quality of the transmission; and be it further

RESOLVED, That the FCC and State commissions take all appropriate actions to protect consumers by immediately addressing the call terminating issues that exist.

*Sponsored by the Committee on Telecommunications
Adopted by the NARUC Board of Directors July 20, 2011*