

effective enforcement mechanisms that would identify the source of any rural call completion problems and either update procedures or institute enforcement actions as appropriate to address such problems. Rural consumers impacted by call completion problems cannot wait for their concerns to be addressed while the Commission sifts through excessive amounts of data and reports. Targeted collection of data relating to enforcement actions will enable the Commission to promptly identify the source of rural call completion problems and quickly resolve such problems. Excessive requirements and procedures, such as those suggested by NARUC in its early-filed comments on the *NPRM*,⁵ will create costly and burdensome mechanisms to address a problem, that albeit serious, is temporary and will be ameliorated as per-minute terminating access rates are phased down.

I. USTelecom and Its Members are Dedicated to Providing High Quality Telephone Service, Including Completion of Calls to Rural Areas

All Americans, including rural Americans, expect and deserve high quality communications service, including high quality voice service. That is why USTelecom and its member companies have strongly advocated reforms that would advance the disbursement of Connect America Fund (“CAF”) Phase I support,⁶ urged prompt completion of the cost model to enable implementation of CAF Phase II,⁷ and requested a reexamination of the accuracy, transparency and particularly the predictability of the Quantile Regression Analysis caps on rate-

⁵ See Comments of the National Association of Regulatory Utility Commissioners, *In the Matter of Rural Call Completion*, WC Docket No. 13-39, (filed May 8, 2013).

⁶ See Comments of the United States Telecom Association, The Independent Telephone & Telecommunications Alliance, and the ABC Coalition, *In the Matter of Connect America Fund*, WC Docket No. 10-90 (filed Jan. 28, 2013).

⁷ See Comments of the United States Telecom Association, AT&T, CenturyLink, FairPoint Communications, Frontier Communications, Verizon and Windstream Communications, *In the Matter of Connect America Fund High-Cost Universal Service Support*, WC Docket No. 10-90 WC Docket No. 05-337, (filed July 9, 2012).

of-return carriers high-cost loop support.⁸ Prompt and proper resolution of the issues involved with implementation of those mechanisms will advance the extension and upgrading of modern networks that promote reliable voice and broadband services in the rural, high-cost areas of our nation.

But investing in the maintenance and extension of robust communications networks in rural areas is for naught if there are practices inhibiting communications, including the completion of voice calls on those networks, or if providers are intentionally not completing calls in order to avoid paying per-minute terminating access charges that are above certain levels. USTelecom supports Commission action to ensure these issues are promptly addressed.

II. When Rural Call Completion Problems are Identified, the Commission Should Collect Data Targeted at Resolving Such Problems

The *USF/ICC Transformation Order*⁹ recognized and addressed various arbitrage schemes that resulted from the legacy intercarrier compensation mechanisms. Along with responding to concerns about rural call completion, the Commission should grant the petition filed by TDS Communications Corporation and supported by USTelecom and others that would include the revenues avoided by Halo Wireless¹⁰ in the baseline period for calculation of the

⁸ See Application for Review of the United States Telecom Association, *In the Matter of Connect America Fund*, WC Docket No. 10-90, *High-Cost Universal Service Support*, WC Docket No. 05-337 (filed June 22, 2012).

⁹ See *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, 17715, ¶ 133, 17711-23, ¶¶ 149-150 (2011) (“*USF/ICC Transformation Order*”), *pets. for review pending sub nom.* In re: FCC 11-161, No. 11-9900 (10th Cir. filed Dec. 18, 2011).

¹⁰ See *USF/ICC Transformation Order* at ¶¶ 1005-1006, and Comments of the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, the Eastern Rural Telecom Association, the Western Telecommunications alliance, and the United States Telecom Association, *In the Matter of Petition of TDS Communications Corporation for Limited Waiver of 47 C.F.R. § 51.917 (c)*, WC Docket Nos. 10-090, 07-135, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (filed Oct. 1, 2012).

intercarrier compensation phasedown. The Commission also should continue its efforts to clamp down on traffic pumping and mileage pumping, and vigorously enforce its rules intended to eliminate phantom traffic.

The *NPRM* properly frames rural call completion as a particularly troublesome access arbitrage issue. However, the proposed data collection regime will not provide the Commission the actionable data it needs. Comparing rural and urban call completion rates introduces unnecessary variables into the data analysis.¹¹ If the issue is truly related to access arbitrage, then call completion should be measured by the rate of call completion to carriers with various levels of terminating access rates, which do not necessarily correlate with the urban or rural status of an area. For example, access rates for price cap companies are uniform across study areas, many of which encompass both urban and rural areas within a state. And even rate-of-return carriers who generally serve rural areas have significantly varied levels of per-minute terminating access rates. Successful call completion should be compared against carriers with higher and lower levels of terminating access rates, whether or not those carriers are rate-of-return or price cap, rather than between urban and rural areas where call completion rates could be affected by other factors.

It cannot be disputed that if the majority of rural call completion problems are due to access arbitrage, the problem should be vastly reduced as the *USF/ICC Transformation Order* is implemented and terminating per-minute switched access and reciprocal compensation rates are

¹¹ For example, by providing monies for a Mobile Fund in the *USF/ICC Transformation Order*, the Commission has recognized the gaps in mobile voice coverage in rural areas that could contribute to completion problems on rural wireless to rural wireline calls. Dropped or incomplete calls due to the current state of rural wireless voice coverage should not confuse the issue of rural call completion.

phased down. However, as noted by the Commission in its Declaratory Ruling addressing rural call completion issues, although the transition to a bill-and-keep methodology “should eliminate the primary incentives for cost-saving practices that appear to be undermining the reliability of telephone service... there is a need to limit the adverse impact of these rural call completion problems on consumers in the near term.”¹² USTelecom endorses prompt Commission action to address rural call completion.

Required submissions of data should be related to enforcement actions and not cast an unnecessarily broad net across all providers or mandate a continuing reporting obligation that is not related to enforcement. As terminating access rates come down, the Commission should carefully monitor the state of rural call completion and reduce or eliminate as soon as possible any obligations to submit data that it adopts as a result of the *NPRM* that become unnecessary due to the amelioration of the problem. Given the set timetable for terminating access rate reductions, the Commission can and should set a definite sunset date for elimination of such requirements. It is not necessary to wait until the completion of the intercarrier reform transition to reduce or eliminate any reporting requirements, as is suggested in the *NPRM*.¹³ That date can certainly be far earlier than the completion of the transition to bill-and-keep for terminating access.¹⁴

On the other hand, the anecdotal evidence available today does not reveal the extent that arbitrage of terminating access rates, as opposed to other factors, is playing in the rural call

¹² See Declaratory Ruling at ¶ 10, *In the Matter of Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, (rel. Feb. 6, 2012).

¹³ See *NPRM* at ¶ 38.

¹⁴ See letter of February 6, 2013, to Marlene H. Dortch, Secretary, Federal Communications Commission, from Michael B. Fingerhut, Senior Counsel, Government Affairs, Sprint Nextel, CC Docket No. 01-921 and WC Docket No. 07-135.

completion problem. The Commission should take care to not be so focused on such arbitrage that it excludes consideration of other factors that may be contributing to the problem. The Commission should examine whether there are any barriers to carriers promptly updating the Local Exchange Routing Guide (“LERG”) so that calls are properly routed, or whether the increasing complexity inherent in the evolution of the voice network to a mixture of the PSTN and IP networks is creating problems with call completion. The increase in customers originating calls from wireless phones could also be contributing to some of the symptoms described under the rubric of rural call completion. The Commission has recognized that there are gaps in mobile voice coverage in rural areas.¹⁵ Dropped or incomplete calls originating on wireless networks in rural areas and terminated on rural wireline networks should not be confused with the issue of rural call completion.

III. The Commission Must Continue to Vigorously Enforce Its Policies With Regard to Rural Call Completion

Even in the absence of the proposed reporting requirements, the Commission has begun to vigorously enforce its policies with regard to rural call completion. Level 3 Communications, LLC, resolved an investigation into its rural call completion practices by agreeing to meet rigorous, verifiable call completion standards and to provide extensive records that will assist FCC enforcement of rules protecting against failed calls to rural areas.¹⁶ Level 3 also agreed to make a \$975,000 voluntary contribution to the U.S. Treasury, and agreed to make additional \$1 million voluntary contributions going forward if it misses specified quarterly benchmarks.¹⁷

¹⁵ The Commission dedicated substantial funding to the Mobile Fund in the *USF/ICC Transformation Order* to fill in some of those gaps.

¹⁶ See FCC News Release, *Level 3 Agrees to Adopt Rigorous New Call Completion Standards and Provide Rural Call Completion Data, Resolving FCC Investigation* (rel. March 12, 2013).

¹⁷ *Id.*

Clearly, the Commission presented sufficient complaint data from its current processes, and presumably further evidence from the its resulting investigation, for Level 3 to decide that a consent decree with the Enforcement Bureau was in its best interests.

Given that outcome, it is not clear that additional investigational mechanisms, such as potentially onerous reporting and data retention requirements, are necessary. The Commission made it abundantly clear in its Declaratory Ruling that it has the requisite authority and established processes to deal with complaints,¹⁸ which are a much more targeted and efficient approach than casting a net across all carriers with a broadly-based data request. Instead of requiring data reporting and retention by all providers, the Commission could require that such information be retained and reported when the volume of substantiated informal complaints received indicates that investigation is warranted and such information is not currently being retained and/or reported. Such reporting should be tied to the enforcement action and not be a continuing obligation.

Absent adoption of that targeted approach, USTelecom supports the targeted collection and retention only of information that directly impacts the determination as to whether a provider is contributing to the rural call completion issue. USTelecom also supports the inclusion of realistic safe harbors which aim to relieve providers that have policies and procedures minimizing the rural call completion problem of some or all call completion data retention and reporting obligations proposed in the *NPRM*.

IV. Any Reporting and Data Retention Requirements Should be Uniform Across Providers

¹⁸ See Declaratory Ruling at ¶ 4, *In the Matter of Developing an Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135 (rel. Feb. 6, 2012).

Any data requirements adopted in the *NPRM* should be imposed uniformly across facilities-based providers that originate calls which are terminated on rural LECs with high terminating access rates. Local exchange carriers, interexchange carriers, commercial mobile radio service providers, and providers of both interconnected VoIP and one-way VoIP service should be included in the data reporting mandate. The National Exchange Carrier Association's April 2012 call completion study revealed that a particularly high proportion of calls originating as nomadic VoIP were failing to be completed.¹⁹ Exclusion of any provider that is terminating calls to rural customers in areas with higher per-minute terminating access rates could result in an ineffective Commission response to the problem. It would also encourage further arbitrage, in that providers engaging in such arbitrage have a competitive advantage over those who complete calls and pay the appropriate access rates.

V. Smaller Long-Distance Providers Should Be Exempt From Reporting and Retention Rules

If the Commission decides to impose a data retention and reporting regime, USTelecom agrees with the Commission's proposal that originating long-distance providers with fewer than 100,000 retail long-distance customers should be excluded from the data retention and reporting requirements. Such an exemption will lessen the burden of compliance on smaller service providers, which are often resource-constrained. At the same time, it will not prevent the Commission from gaining a substantial amount of data that should reflect an accurate picture of call-routing practices across the country.

¹⁹ See *NPRM* at ¶ 31, and *NPRM* at 19, Appendix A, Proposed Rules, § 64.2107, "Exceptions from Retention and Reporting Requirements."

VI. Conclusion

The Commission should promptly address issues associated with rural call completion. Targeted collection of data relating to enforcement actions will enable the Commission to promptly identify the source of rural call completion problems and quickly resolve such problems. Rural consumers impacted by call completion problems cannot wait for their concerns to be addressed while the Commission sifts through excessive amounts of data and reports.

Respectfully submitted,

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