

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

To: The Commission

COMMENTS OF CTIA—THE WIRELESS ASSOCIATION®

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I. INTRODUCTION AND SUMMARY

CTIA–The Wireless Association® (CTIA) hereby responds to the Commission’s request for comment on a new proposed regulatory structure that would require all carriers to track, report, and retain extensive data regarding their performance in completing telephone calls.¹ As discussed in more detail below, problems with the completion of calls to rural incumbent local exchange carrier (“ILEC”) exchanges appear to involve a small subset of the interexchange carriers (“IXCs”) that transmit long distance calls. Thus, CTIA believes that the Commission’s efforts in this area should focus on investigations and enforcement, rather than imposing burdensome prophylactic obligations indiscriminately across all providers, the vast majority of whom are not involved in the problem.

While CTIA opposes the broad application of burdensome rules, CTIA believes that, to the extent that the Commission nonetheless imposes data collection and reporting requirements, they should be narrowly tailored to minimize their burden. For example, any reporting obligations should clearly not apply to wireless-terminated calls, given the lack of any evidence

¹ *Rural Call Completion*, WC Docket No. 13-39, Notice of Proposed Rulemaking, 28 FCC Rcd 1569 (2013) (“NPRM”).

of a problem with such calls, and should permit the use of sampling rather than tracking of all calls.

II. THE COMMISSION SHOULD NOT IMPOSE BROAD AND BURDENSOME PROPHYLACTIC OBLIGATIONS ACROSS THE INDUSTRY

A. Rather Than Imposing Burdensome Obligations on Compliant Carriers, The Commission Should Adopt a More Effective and More Tailored Response Based on Investigation and Enforcement

In the NPRM, the Commission proposes new rules that would apply indiscriminately across the long distance industry and would require carriers to track and retain enormous volumes of information, as described below.² Rather than imposing burdensome new data-gathering obligations on the entire industry, the Commission should focus its efforts on identifying and addressing the relatively small number of carriers that actually are failing to complete calls. The new rules proposed in the NPRM are focused on increasing the data carriers are required to collect regarding call completion.³ NARUC argues that “collecting data alone is not sufficient to resolve the problem”⁴ but, as the NPRM points out, failing to complete calls already is a violation of the Commission’s rules.⁵

Moreover, there is no evidence that a significant new data burden is necessary for the Commission to conduct effective enforcement efforts. Without any broad data-gathering or reporting requirements, the Commission pursued an investigation and entered into a consent

² See *infra* Section II. B.

³ The NPRM also proposes new measures regarding call signaling, upon which CTIA presents no comment at this time.

⁴ Comments of NARUC, WC Docket No. 13-39 (filed May 8, 2013) (“NARUC Comments”) at 3.

⁵ NPRM at ¶¶ 7-10.

decree with at least one carrier for call completion issues.⁶ This shows that the Commission can pursue call completion problems without burdensome across-the-board data-collection requirements.

In contrast, the measures proposed in the NPRM are a blunt instrument: measures that would impose enormous burdens on rule-abiding carriers that are not contributing to call completion problems. In fact, there is little if any analytical data in the record regarding the scope of the problem, and anecdotes alone are insufficient to support new regulatory requirements of this scope.⁷ Indeed, the NPRM fails to present evidence that call completion problems are the result of malfeasance on behalf of a wide range of carriers. While requiring comprehensive call completion reports from every long distance carrier might make the Commission's enforcement task easier, this marginal benefit does not justify the overwhelming burden of such requirements.

Such an approach clearly would be inconsistent with the Commission's commitment to follow the Executive Order requiring agencies to ensure that regulations' benefits justify their costs, and that regulations are not overly burdensome.⁸ Instead of imposing expansive new data

⁶ *Level 3 Communications LLC*, File No. EB-12-IH-0087, Order, 28 FCC Rcd 2272 (Enf. Bur. 2013) (“*Level 3*”).

⁷ The only filing providing more than anecdotal information about call completion failures is the NECA study, but that filing includes no information about the methodology used to collect or analyze the data, whether the survey was stratified, or what its error rate might be. *See* Letter from Colin Sandy, NECA, to Marlene Dortch, FCC, WC Docket Nos. 07-135 *et al.* (filed May 21, 2012).

⁸ *See, e.g.*, Executive Order 13579--Regulation and Independent Regulatory Agencies (July 11, 2011) (requiring agencies to weigh costs and benefits of regulations); Statement from FCC Chairman Julius Genachowski on the Executive Order on Regulatory Reforms and Independent Agencies (July 11, 2011) (directing the FCC to follow the Executive Order).

collection, reporting, and recordkeeping obligations, the Commission should use investigation and targeted inquiries to address call completion problems.

B. The Proposed Recordkeeping and Reporting Obligations Would Be Extraordinarily Burdensome

If adopted, the proposed rules would require carriers to track and retain enormous volumes of information: requiring all carriers to track call completion rates (and other information) for all long distance calls that their customers originate, and differentiate among a variety of categories of data. As noted, CTIA believes that the Commission does not have sufficient factual basis to impose such broad and burdensome requirements across the wireless industry, particularly when other more effective and tailored tools are available to address any call completion problems in a targeted manner.

As for the NPRM's proposed requirements, it is clear that carriers do not collect much of this data today, and thus would face a significant implementation burden in addition to the ongoing data collection, reporting, and retention burden. The wireless industry delivers more than 2.3 *trillion* minutes of voice traffic every year. While much of this is wireless-to-wireless traffic that is not subject to call completion issues (and thus should not be subject to any new obligations),⁹ this still amounts to hundreds of billions of calls each year. The proposed data retention requirement would require carriers to maintain detailed records for each of the wireline-terminated calls for six months, including calling and called party numbers, date and time, interstate or intrastate, answered or not, and whether an intermediate carrier was involved.¹⁰ Thus, the wireless industry would be expected collectively to maintain records at any given time for each of these several data points for an enormous rolling pool of calls.

⁹ See *infra* Section III.

¹⁰ NPRM, proposed Rule 64.2103.

Needless to say, this is a breathtaking amount of data to track, report, and retain. CTIA also notes that this proposal also raises significant privacy questions since it seeks to impose a new government mandate on carriers to retain this information which would then be available upon request by law enforcement as a stored record.

In addition, carriers currently do not track much of the information that the Commission proposes to collect, and thus would have to develop new systems to identify much of this data. Wireless carriers currently do not have any way to identify which terminating ILECs would qualify as “rural” under the new rules.¹¹ Even with a list of rural OCNs, however, wireless carriers will have to develop, implement, and maintain systems to distinguish between calls to rural OCNs and non-rural OCNs. Wireless carriers also do not generally distinguish between interstate and intrastate calls, or track which calls are handled by an intermediate carrier. As a result, wireless carriers would have to develop systems to make these distinctions, as well as ways of tracking, reporting, and retaining this information.

In sum, the proposed rules would create enormous burdens on carriers to develop new tools to differentiate among different types of traffic, and ongoing burdens to track, report, and retain staggering amounts of data. Moreover, requiring carriers to expend such resources to track the jurisdiction of telephone calls (again, without support in the NPRM for why this is necessary) is also inconsistent with the goals of the *ICC-USF Transformation Order*, which seeks to move legacy regulation away from arbitrary distinctions based on the jurisdiction of calls. Such

¹¹ If any form of reporting is required, the Commission must make available a reliable list of rural OCNs. *See Wireline Competition Bureau Announces Deadlines for Comments on Rural Call Completion Notice of Proposed Rulemaking, Invites Comment on List of Rural Operating Company Numbers*, WC Docket No. 13-39, Public Notice, DA 13-780 (rel. April 18, 2013) (seeking comment on a proposed list of rural OCNs).

distinctions are inconsistent with consumer usage and are not tracked by wireless carriers for ongoing business purposes.

C. Call Completion Problems Are Not an Industry-Wide Phenomenon, but Bill-and-Keep Will Reduce Incentives for Arbitrage

The Commission suggests that call completion problems could stem from long distance carriers' efforts to avoid high terminating access charges in rural areas, noting that “[c]all completion problems appear to occur particularly in rural areas served by rate-of-return carriers, where the costs that long distance providers incur to complete calls are generally higher than in non-rural areas.”¹² The NPRM therefore proposes to sunset the proposed rules at the end of the transition to a bill-and-keep mechanism, under which carriers will recover their costs from their own customers rather than other carriers.¹³

As noted above, most carriers (particularly wireless carriers) take care to ensure that the long distance calls that they carry are completed. Despite high access charges in most rural areas, there is no evidence that most carriers are failing to complete calls to rural ILECs. Nevertheless, to the extent that the Commission theorizes that call completion problems are accentuated by efforts to avoid inflated access charges, the solution is to address the underlying problems with the access charge system – not impose additional burdensome regulatory requirements on all long distance carriers.

The Commission previously has concluded that existing access rates are well above cost.¹⁴ By contrast, a bill-and-keep regime provides carriers and their customers with clearer

¹² NPRM at ¶ 6.

¹³ *Id.* at ¶ 38.

¹⁴ *Connect America Fund, et al.*, WC Docket Nos. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17911 ¶ 752 (2011) (“*USF/ICC*”).

economic signals and encourages carriers to operate efficiently.¹⁵ Bill-and-keep also eliminates incentives for “wasteful arbitrage schemes” that arise due to “above-cost interconnection rates” such as access charges.¹⁶ For these and other reasons, the Commission has directed ILECs to phase out their access charges and replaced the access regime with a bill-and-keep regime.¹⁷ Under the current schedule, however, the transition to bill-and-keep for rate-of-return ILECs will not be fully complete until July 1, 2020. To the extent that the Commission believes that the access charge system is contributing to rural call completion problems, it could consider accelerating the transition to bill-and-keep in areas with high terminating access charges, rather than imposing new and burdensome requirements on those carriers who are required to pay above cost access charges.

III. WHILE UNNECESSARY AND INAPPROPRIATE, ANY NEW RECORDKEEPING OR REPORTING OBLIGATIONS SHOULD BE NARROWLY TAILORED

As discussed above, CTIA opposes the imposition of burdensome data collection, reporting, and recordkeeping obligations because most carriers terminate calls without incident, and targeted enforcement action is a more effective and less burdensome means to address call completion.¹⁸ However, to the extent that the Commission nonetheless imposes new regulations, they should be as narrowly tailored as possible to minimize their burden, particularly on carriers that are not contributing to call termination issues.

Transformation Order”), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

¹⁵ *Id.* at 17906 ¶ 742.

¹⁶ *Id.* at 17910 ¶ 749.

¹⁷ *Id.*

¹⁸ *See supra* Section II.

First, any new rules should not apply to calls terminated to rural (or any other) CMRS providers. There is no evidence of call completion problems with calls to CMRS carriers, and thus no basis to amplify the burden of any new data collection, reporting, or recordkeeping rules by extending them to such calls.¹⁹

Second, rather than requiring carriers to track, report, and maintain data regarding *all* calls, any rules should allow carriers to provide data from reasonable and meaningful *samples* of calls in order to ascertain call completion rates. An approach based on sampling would allow carriers to gather the data through a process akin to a traffic study, potentially minimizing the need to develop expensive new systems to track every single call. It also would reduce the amount of data that has to be reported and retained. Such an approach would also likely implicate fewer privacy concerns, as noted above.

Third, while the use of safe harbors could potentially reduce recordkeeping and reporting burdens, the NPRM's proposals require refinement. With regard to the "managing intermediate provider safe harbor," the Commission proposes to relieve carriers of data gathering, record retention, and reporting obligations if they limit, by contract, their use of intermediate carriers.²⁰ CTIA notes that, in analyzing carriers' compliance with the rule, however, only carriers selected by the reporting carrier or its intermediate carriers should "count" towards the total. Many rural ILECs can only be reached through tandems owned by other carriers, such as a larger regional ILEC or a state access network. Neither originating long distance carriers nor their intermediate carriers have any involvement in the selection of these tandem providers, and also have no

¹⁹ See NPRM at ¶ 24.

²⁰ *Id.* at ¶ 33.

control over their performance. As a result, such carriers should not “count” towards the total number of carriers attributed to the reporting carrier for purposes of the safe harbor.

Similarly, while the Commission proposes a “monitoring performance safe harbor,” CTIA believes that any such safe harbor should be based on a standard that is flexible enough to represent a meaningful safe harbor. This rule would reduce record retention requirements and eliminate reporting requirements for carriers that monitor their own call completion performance and keep the difference between their rural call answer rate and their non-rural call answer rate to a specified percentage.²¹ CTIA questions whether the proposed 2 percent differential may be so narrow as to be of no practical utility, and notes that the proposed two percent differential is less than half of the 5 percent differential that the Commission accepted in the rural call completion consent decree with Level 3.²² It is far from clear why the Commission would pursue a more stringent trigger for a safe harbor that would apply to the broader industry.

Fourth, the Commission should decline to adopt any additional data gathering, reporting, or recordkeeping requirements. For example, NARUC has proposed a number of additional obligations, including a requirement that carriers report the specific reasons for any call failures that may occur.²³ Systems that could forensically determine the reasons for call failure would be spectacularly burdensome to develop. Even more than the reporting requirements that the Commission already has proposed, burdens of this requirement would be out of all proportion to the benefits of the information it would produce. If the Commission adopts any new requirements, they certainly should not extend beyond the proposals in the NPRM.

²¹ NPRM at ¶ 35.

²² *Level 3*, 28 FCC Rcd at 2280 ¶ 16.

²³ NARUC Comments at 8.

Finally, the Commission should avoid provisions that, while intended to reduce the recordkeeping and reporting burden, may inadvertently increase it. For example, the Commission's proposal to require recordkeeping and reporting only for OCNs where the carrier attempts 100 or more calls per month will not reduce burdens and, indeed, may actually create more burden than it eliminates. Such an approach would require carriers to create a separate system to track which OCNs reach the 100 call threshold each month and which do not.²⁴ Similarly, the proposal to exclude calls that the reporting carrier initially hands to an intermediate provider but which the intermediate carrier subsequently hands back to the reporting carrier would likely complicate the reporting and recordkeeping process by requiring carriers to develop systems to identify such calls.²⁵

²⁴ NPRM at ¶ 20

²⁵ *Id.* at ¶¶ 27-28.

IV. CONCLUSION

CTIA urges the Commission be circumspect about its response to call completion issues, and not create an enormously regulatory structure that burdens innocent carriers where targeted investigation and enforcement would be more effective. To the extent that the Commission imposes any new requirements, they should be as narrowly tailored as possible, and the Commission should ensure that the benefits of any proposed requirements clearly outweigh their burdens.

Respectfully submitted,

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