

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

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

REPLY COMMENTS OF GREAT PLAINS COMMUNICATIONS, INC.

Great Plains Communications, Inc. (“GPC”), by counsel, hereby submits these Reply Comments in the above-captioned proceeding.¹ Having expended a great deal of time and effort for several years in the provision of assistance to both GPC and non-GPC customers experiencing problems with completion of long distance calls terminating on GPC’s network,² GPC strongly supports efforts to ensure that rural call completion issues are addressed quickly and effectively so that concerns regarding potential public safety and rural economic development are avoided. Meaningful enforcement actions to deter carriers causing rural call completion problems, including significant fines and forfeitures and rigorous compliance reporting requirements, are long overdue. Accordingly, GPC urges the Federal Communications Commission (“Commission” or “FCC”) to promptly take action in this proceeding in a manner that harmonizes such action with on-going state regulatory commission efforts so that rural call completion issues are comprehensively addressed. GPC respectfully submits that such action should assist in resolving rural call termination issues once and for all, or at least will identify those facilities-based long distance and/or interexchange transport providers that are not meeting their obligations under the Communications Act of 1934, as amended (the “Act”) as well as existing Commission policies and decisions. To the extent that existing Commission policies

¹ The reply comment date was extended to June 11, 2013. *See In the Matter of Rural Call Completion, Order*, WC Docket No. 13-39, DA 13-1196, released May 22, 2013 at ¶¶1, 5.

² Accompanying this filing is the Declaration of Ken Pfister, Vice President-Strategic Policy for GPC, certifying to the facts referenced herein.

and requirements are not being followed or that recent FCC Enforcement Bureau (“EB”) actions have suggested a “safe harbor” within which carriers can disregard their obligations to ensure that long distance calls are delivered for termination, the requirement to successfully deliver calls to a rural incumbent local exchange carrier (“RLEC”) for termination should be reaffirmed. Moreover, to the extent necessary, aggressive enforcement actions should be undertaken by the FCC regarding facilities-based long distance providers and/or interexchange transport providers where rural call completion issues exist and continue to exist.

I. The Record Confirms GPC’s Experience that Prompt FCC Action is Necessary Coupled with Vigilant Enforcement (Both Now and After Rules are Adopted).

GPC is an RLEC operating 63 exchanges in Nebraska. GPC has been designated as an Eligible Telecommunications Carrier, deploying its network in an effort to provide quality and affordably priced telecommunications services to the customers GPC serves. GPC is the carrier of last resort in its service area. That service area is comprised of more than 14,000 square miles across two area codes (308 and 402). Taken as a whole, the service area is unquestionably rural and sparsely populated.

Like all Americans, consumers living within the GPC service area deserve the same level of service with respect to completion of terminating long distance calls that urban area subscribers receive. This is not a novel or extraordinary expectation; it is a fundamental requirement of the Commission under the Act including the universal service provisions contained within it.³ The fact that rural call completion problems continue to exist, however,

³ The Commission was created

[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications. . . .

creates significant public policy issues regarding the underlying public policy of providing quality service to all areas and citizens of the United States. Moreover, rural call completion issues present the continued risk that a public safety and/or emergency tragedy will occur⁴ which could have been avoided if call completion requirements in rural areas of the United States were, in fact, properly policed and definitive enforcement action taken if and when violations occur.⁵ And, when such violations occur, significant forfeitures and rigorous compliance reporting requirements must be established in order to ensure that such actions do not occur in the future. To provide the necessary coordination between the FCC, State Commissions, and the affected RLECs, GPC respectfully submits that all such compliance reporting requirements be made available to State Commissions and the affected RLECs so that each can monitor the effectiveness of the rural call completion obligations being addressed.

GPC has been proactively involved *for several years* in addressing rural call completion issues raised by its customers as well as customers of other carriers attempting to call GPC customers, certain of which impacted local law enforcement entities and emergency/first

See 47 U.S.C. §151; *see also* 47 U.S.C. §254.

⁴ *Accord In the Matter of Rural Call Completion, Notice of Proposed Rulemaking*, WC Docket No. 13-39, FCC 13-18, released February 7, 2013 (“*NPRM*”) at ¶2 (FCC confirming that call completion issues “cause[] rural businesses to lose customers, cuts families off from their relatives in rural areas, and creates potential for dangerous delays in public safety communications in rural areas.”) (footnote omitted).

⁵ GPC respectfully submits that events related to health emergencies and public safety specifically noted by the FCC when establishing E911 requirements for Voice over Internet Protocol should not need to occur before action to address rural call completion is taken and then properly enforced. *See In the Matters of IP-Enabled Services, E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking*, WC Docket Nos. 04-36 and 05-196, FCC 05-116, released June 3, 2005 at ¶1 n.2 (describing incidents related to “home invasion burglary” and “emergency medical” situations). Prompt action on the *NPRM* should minimize the risk of similar events occurring arising from long distance calls that failed to complete in rural areas of the America. In the interim, aggressive enforcement actions on rural call completion issues based on *existing* FCC decisions and policies (*see* n.10, *infra*) should be undertaken also in an effort to minimize the potential for public safety and health issues.

responders.⁶ GPC's experience confirms the RLEC Association's observations that "RLECs, whose resources are already stretched thin, have devoted many staff hours responding to angry customer complaints and have done their utmost to track down and troubleshoot these failed calls."⁷ But simply establishing reporting obligations under the *NPRM* without effective enforcement of rural call completion requirements is insufficient to properly address issues regarding long distance call completion.

Aggressive enforcement of rural call completion requirements is long overdue and particularly appropriate based on GPC's experience in addressing such issues. As a result of the cyclical nature of the call completion issues that GPC's customers have experienced and have reported to GPC,⁸ GPC has, as the local terminating network provider, experienced the time and expense burden required to address consumer inquiries and complaints by customers affected by the inability to make or receive calls. GPC has previously reported those instances to federal and state regulators. The harmful effects upon rural carriers that are committed to providing prompt consumer responses and quality service extend much further than the time and expense of addressing consumer inquiries and complaints. Recently, a significant GPC customer elected to terminate GPC's service because of long distance call completion issues that were not related to GPC's network. GPC's real-world experience confirms the Public Service Commission of Wisconsin's observation that: "When voice service does not work, regardless of whether the

⁶ In April 2010, GPC began investigating call completion problems on its network in response, for example, to customer complaints. GPC's repeated tests on its network found no problems; thus the company directed its attention to routing practices of other carriers.

⁷ Comments of the National Exchange Carrier Association, Inc., NCTA – The Rural Broadband Association, the Western Telecommunications Alliance, and the Eastern Rural Telecom Association, WC Docket No. 13-39, filed May 13, 2013 (the "Rural Associations Comments") at 2.

⁸ GPC'S experience regarding the cyclical nature of call completion issues appears to be mirrored by other RLECs. See Comments of the Blooston Rural Carriers, WC Docket No. 13-19, filed May 13, 2013 ("Blooston Comments") at 3.

fault lies with the RLEC, [] customers may seek other options.”⁹ GPC is being financially harmed by unenforced call completion violations, and its long-standing compliance with the Nebraska Public Service Commission (“Nebraska Commission”) quality of service requirements and GPC’s commitment to excellent customer service is suffering through no fault of its own.

Despite GPC’s resource-intensive and good faith efforts to meet its rural customers’ needs and address rural long distance call completion issues, adverse consequences upon GPC’s operations have occurred, and, *most importantly*, GPC’s rural consumers’ reasonable expectation that long distance calls made to them will be received is no longer assured. These adverse public interest consequences must, in GPC’s view, be ameliorated. Vigilant enforcement action now and following prompt FCC adoption of rural call completion rules is amply justified, with current aggressive enforcement being taken by the FCC based on *existing* FCC policies and directives.¹⁰

Sprint contends that action on the *NPRM* is not necessary since there has been no proven “epidemic” of rural call completion issues.¹¹ In GPC’s view, however, rural call completion problems are indeed an epidemic in vast parts of the country. But setting wording aside, the

⁹ Comments of the Public Service Commission of Wisconsin, WC Docket No. 13-39, dated May 9, 2013 at 2.

¹⁰ GPC respectfully submits that the rational expectation was that, after the FCC made clear that carriers could not “block, choke, reduce or restrict traffic in any way”, rural call completion issues should have diminished considerably. *See In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers, Declaratory Ruling and Order*, WC Docket No. 07-135, DA 07-2863, released June 28, 2007 at ¶ 6; *see also In the Matter of Developing an Unified Intercarrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers, Declaratory Ruling*, WC Docket Nos. 01-92 and 07-135, DA 12-154, released February 6, 2012 at ¶3 (reiterating same). However, that has not been the case. Rather, based on the cyclical nature of the call completion issues that GPC has experienced, the volume of call completion issues that GPC has addressed since, for example, February of 2012 continue.

¹¹ *See, e.g.*, Comments of Sprint Nextel Corporation, WC Docket No. 13-39, filed May 13, 2013 (“Sprint Comments”) at 1, 3-5.

need for FCC action on rural call completion issues has been raised to and by members of Congress, State Commissions, and carriers.¹² The fact that rural call completion issues have not abated – a fact that is unassailable – is sufficient basis to support a finding that prompt and proper action must be taken by the FCC now, both with respect to the *NPRM* and all necessary enforcement actions. Likewise, the inference from Sprint’s comments that no real issue exists since 99.79% of its calls in a recent traffic study were completed to rural areas in Nebraska,¹³ should not dissuade the FCC from prompt action to address rural call completion issues. Considering that facilities-based long distance providers had prior notice and knowledge of the times and dates of the Nebraska study and thus a facilities-based long distance provider could ensure that all of its necessary transport and routing arrangements were up to date, Sprint’s experience in the Nebraska test may be understandable. However, Sprint’s contention does not address the cyclical nature of rural call completion issues that GPC has experienced and apparently other RLECs have also experienced. Given the geographic expanse of its network, GPC has found that the cyclical nature of call completion issues has resulted in an increase in problems in one area of its network while other areas call completion issues may temporarily improve. Finally, Sprint’s contention does not address call completion problems that are being experienced from other facilities-based long distance carriers and interexchange transport providers *throughout the nation*. GPC respectfully submits that prompt action by the FCC as described herein is amply justified. Sprint’s contentions should not dissuade policy makers from such action.

¹² See, e.g., Rural Associations Comments at 3 and n.7; Comments of the National Association of Regulatory Utility Commissioners, WC Docket No. 13-39, filed May 8, 2013 (“NARUC Comments”) at 3 and n.9.

¹³ See Sprint Comments at 10-11.

II. The FCC should Confirm that Recent EB Action did not Establish an Industry-wide Safe Harbor; Any Effort to Adopt a “Safe Harbor” must be Record-Based and Consistent with the Act.

GPC shares concerns regarding recent actions taken by the FCC’s EB suggesting a 5% safe harbor within which Level 3 Communications, LLC long distance calls to rural areas *need not be completed*¹⁴ could be misapplied as an FCC-sanctioned industry standard.¹⁵ The FCC should take immediate action to ensure that the *Level 3 Consent Decree* has *not* established a *de facto* FCC standard regarding levels of call completion to rural areas.

To this end, GPC agrees with the observations raised by NARUC and other state commenters that there needs to be a proper legal and public policy basis for establishing a safe harbor, including the proposed 2% safe harbor within the *NPRM*.¹⁶ And, even if a “safe harbor” could be established in a manner consistent with the overall policies of the Act, facts would still be needed to justify any such safe harbor that differentiates call termination percentages between rural and urban areas. As NARUC states,

With respect to the second safe harbor option, the FCC proposes to allow a carrier safe harbor if it certifies annually that its answer rates on calls to rural telephone company customers are no more than 2 percent less than calls to non-rural customers. This suggests that 2 percent is an acceptable call completion performance differential between urban and rural calling. There is no evidence or rationale cited in the *NPRM* to justify this performance differential. It seems unlikely there is any possible rationale to justify such a differential. Unless and until such data is produced and entered into the record of this proceeding, the FCC must expect carriers’ call completion performance to be equal between urban and rural areas. The evidence that would be required would necessarily have to establish the existence of influences outside the control of those entities

¹⁴ See *In the Matter of Level 3 Communications, LLC, Consent Decree*, DA 13-371, released March 12, 2013 (“*Level 3 Consent Decree*”) at ¶16(b).

¹⁵ See generally Notice of *Ex Parte* Presentation of the Rural Broadband Alliance, Rural Call Completion, WC Docket No. 13-39, *et al.*, filed April 29, 2013 (the “*RBA April 29th Ex Parte*”) at 2; see also NARUC Comments at 9.

¹⁶ See NARUC Comments at 8-9; Joint State Commission Comments (California, Idaho, Indiana, Iowa, Michigan, Minnesota, Montana, Nebraska, New York, Ohio, Pennsylvania, South Dakota, Vermont and West Virginia), WC Docket No. 13-39, filed May 13, 2013 at 2.

involved in routing a call to completion that occur only on, or mostly on, calls to rural areas and not on calls to urban areas.¹⁷

GPC respectfully submits that the FCC must address quality of service standards for terminating long distance calls and then enforce those standards with meaningful action against violating carriers. Those standards *should not* be compromised based on the failures by a facilities-based long distance and/or interexchange transport providers to meet either their obligations under the Act or *current* Commission policies and decisions (*see* n.10, *supra*), let alone consumers' expectations that long distance calls will be completed.

III. The Record and Public Policy Support the Need for Specific Clarifications to the Reporting Requirements, Coupled with FCC Action Identifying Long Distance Carriers' Network and Arrangements as the Focus of Rural Call Completion Issues.

To ameliorate the negative impacts associated with rural call completion issues, GPC supports efforts to monitor and report data to identify those facility-based carriers that are not completing long distance calls. In this regard, GPC specifically addresses and endorses three areas that commenters suggest can address rural call completion issues.

First, GPC supports the notion that the FCC should *publicly inform consumers in a clear and conspicuous fashion that the experiences to date with rural call completion issues have not involved issues with respect to RLEC networks*¹⁸ but rather have been raised with respect to how calls are delivered to the RLEC's network by the originating end user's long distance provider. This action could, in GPC's view, ameliorate some of the negative aspects of its experiences in addressing consumer complaints and inquiries regarding long distance call completions. Such action could also minimize the time and expense of addressing, for example, informal complaints.¹⁹

¹⁷ NARUC Comments at 8 (footnote omitted).

¹⁸ *See* RBA April 29th Ex Parte at 2.

¹⁹ *See* Blooston Comments at 7-8.

Second, GPC supports a *mandatory* carrier registry to be established by the FCC.²⁰ While GPC, at times, has been able due to its own diligence to contact specific individuals within other carriers' operations who have been able to promptly and efficiently respond to call completion/routing issues, such experience is not uniform or consistent across all carriers. GPC and other rural carriers should not be required to take extraordinary (and time-consuming and expensive) efforts to identify and coordinate fixes to problems with other carriers' networks. Thus, a *mandatory* carrier registry maintained by the FCC's EB and made available on-line to State Commissions and RLECs should be established with, as the Rural Associations suggest, the requirement that a carrier update contact information within 30 days of any change in its provided information.²¹ Moreover, GPC respectfully requests that this requirement make explicit that which is implicit in what the Rural Associations suggest – the carrier's contact individual has all necessary authority to direct and ensure that actions necessary to address a call completion issue are taken. Making this requirement explicit creates the necessary direct accountability for that carrier, and otherwise ensures that the individual so noted is the final word as to how a rural call completion issue for that carrier will be resolved.

Finally, GPC supports efforts to ensure that State Commissions and the FCC work in tandem to address rural call completion issues.²² Specifically, GPC recognizes the efforts of the Nebraska Commission in attempting to resolve these issues within its jurisdiction. Thus, in addition to access to the on-line *mandatory* carrier registry noted above, efforts to share rural call completion information between the FCC and a State Commission that each has developed should be encouraged with any legal issue (should an issue arise) regarding the sharing of such

²⁰ See Rural Associations Comments at 26-27.

²¹ See *id.* at 26.

²² See, e.g., NARUC Comments at 14.

information resolved promptly. In this manner, both the FCC and the State Commission can have input into resolving a rural call completion issue based on their respective expertise and fact finding.

IV. Conclusion.

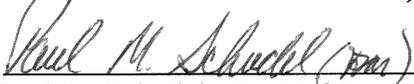
For the foregoing reasons, GPC respectfully submits that prompt FCC action on rural call completion issues be taken, and that aggressive FCC enforcement actions also be taken. Such actions should be specifically coordinated with complimentary actions by the applicable State Commission to ensure that all public policy makers are involved in efforts to finally address rural call completion issues in an effective manner. GPC is properly concerned that absent such actions, rural call completion issues will continue and that rural consumers will continue to be harmed, each result being contrary to the public interest.

Date: June 11, 2013.

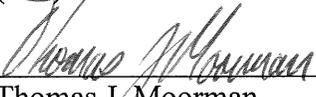
Respectfully submitted,

Great Plains Communications, Inc.

By:



Paul M. Schudel, No. 13723
pschudel@woodsaitken.com
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500



Thomas J. Moorman
tmoorman@woodsaitken.com
Woods & Aitken LLP
2154 Wisconsin Ave. NW, Suite 200
Washington, D.C. 20007
(202) 944-9502

Its Attorneys

DECLARATION

I, Ken Pfister, Vice President-Strategic Policy of Great Plains Communications, Inc. (the "Company"), do hereby declare under penalties of perjury that I have read the foregoing "REPLY COMMENTS OF GREAT PLAINS COMMUNICATIONS, INC." and the factual information contained therein regarding the Company is true and accurate to the best of my knowledge, information, and belief.



Ken Pfister
Vice President-Strategic Policy

Date: 6-11-2013