

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

In the Matter of)
)
Rural Call Completion) WC Docket 13-39
_____)

To: The Commission

JOINT COMMENTS OF:

**BAY SPRINGS TELEPHONE COMPANY, INC.
COOPERATIVE TELEPHONE COMPANY
CROCKETT TELEPHONE COMPANY
DUMONT TELEPHONE COMPANY
HICKORY TELEPHONE COMPANY
MODERN COOPERATIVE TELEPHONE COMPANY
MOULTRIE INDEPENDENT TELEPHONE COMPANY
MUTUAL TELEPHONE COMPANY OF MORNING SUN
NATIONAL TELEPHONE OF ALABAMA, INC.
PALMER MUTUAL TELEPHONE COMPANY
PEOPLES TELEPHONE COMPANY
ROANOKE TELEPHONE COMPANY
ROYAL TELEPHONE COMPANY
SHARON TELEPHONE COMPANY
SPRINGVILLE COOPERATIVE TELEPHONE COMPANY
TERRIL TELEPHONE COMPANY
THE FARMERS MUTUAL TELEPHONE COMPANY OF STANTON, IOWA
VILLISCA FARMERS TELEPHONE COMPANY
WELLMAN COOPERATIVE TELEPHONE ASSOCIATION
WEST TENNESSEE TELEPHONE COMPANY, INC.
WTC COMMUNICATIONS INC.**

Bay Springs Telephone Company, Inc., Cooperative Telephone Company, Crockett Telephone Company, Dumont Telephone Company, Hickory Telephone Company, Modern Cooperative Telephone Company, Moultrie Independent Telephone Company, Mutual Telephone Company of Morning Sun, National Telephone of Alabama, Inc., Palmer Mutual Telephone Company, Peoples Telephone Company, Roanoke Telephone Company, Royal

Telephone Company, Sharon Telephone Company, Springville Cooperative Telephone Company, Terril Telephone Company, The Farmers Mutual Telephone Company of Stanton, Iowa, Villisca Farmers Telephone Company, Wellman Cooperative Telephone Association, West Tennessee Telephone Company, Inc., and WTC Communications, Inc. (collectively the “Independent LECs”) hereby jointly submit their comments in response to the Commission’s Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹

I. Introduction

The Independent LECs are comprised of twenty-one (21) local exchange carriers (“LECs”) operating in six (6) different states. Their collective experience demonstrates that the rules previously adopted have not cured the problem of rural call completion but rather have led to new techniques to circumvent the rules. The rules can be tightened to encompass these new circumventions. Rural residents continue to be victimized by illicit acts of call degradation, including dead air preventing any ability to hear the called party, false busy signals, continuous ringing the called party does not hear, very poor reception, incorrect calling number delivery, and calls not completed at all. With service areas located in the Northeast, South and Midwest, the Independent LECs are uniquely situated to confirm that call degradation is not isolated to any one part of this country, but is a widespread infliction requiring an immediate remedy. The Independent LECs filed initial comments in this proceeding on May 13, 2013 (the “Initial Comments”), and appreciate the opportunity to submit these additional comments today.

¹ *Rural Call Completion, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 13-39, 28 FCC Rcd 16154 (2013) (“*FNPRM*”).

II. The Commission Should Adopt Rules Codifying the Existing Prohibition on Call Routing Practices That Degrade Call Quality and Establish A Bright Line Test For Non-compliance.

As the Commission adopted data retention and reporting requirements to monitor the completion of calls, illicit activity has moved to routing practices that are not monitored by those new rules. Specifically, there has been a significant increase in calls where a circuit is established between the calling and called parties, but the calling party hears only dead air and cannot hear the called party. Another illegal call routing practice that has become prevalent involves continuous ringing, that the calling party hears but the called party does not. The many calls with durations of less than two minutes confirm the magnitude of these illegal acts of call degradation. The calling party will quickly hang up the phone when she can only hear dead air or continuous ringing. Because such dead air calls involve a complete circuit, they are deemed to be “connected”; the call attempt reports that will be filed with the Commission will show such calls as completed and legally compliant, when in fact they are not, because they prevented a conversation from taking place. As the Commission correctly observed, “even when calls to rural areas in particular do get answered, the communications quality of the call may be so poor as to render the communication between the calling and called parties unsuccessful.”² From the consumer’s perspective, there is little difference between an uncompleted call and an answered call during which you cannot hear the conversation.

The Commission requests comments on whether the Commission should adopt rules formally codifying existing prohibitions on blocking, choking, reducing, or restricting traffic. *FNPRM* at ¶130. The Commission also seeks comments on any additional requirements that should be adopted. *Id.* In their Initial Comments, the Independent LECs proposed the adoption

² *Rural Call Completion, Notice of Proposed Rulemaking*, 28 FCC Rcd 1569, 1574 ¶ 15. (2013) (“*NPRM*”).

of new Commission rules that would codify minimum federal standards for call completion and call quality.³ In this proceeding, the Independent LECs urge the Commission to adopt a new rule expressly stating that it is unlawful for any covered provider to block, choke, reduce, or restrict traffic. The new rule should also prohibit call degradation that interferes with communications between the calling and called parties, such as dead air, continuous ringing, false busy signals, and incorrect calling number delivery. In other words, a “complete” call should be one that enables a useful conversation to take place. As noted in the comments filed by the Missouri Public Service Commission, such a new rule will facilitate compliance and aid in enforcement.⁴

To further aid enforcement of this new rule, the Independent LECs recommend that the Commission require covered providers to specify in their quarterly call attempt reports the number of complaints that they have received relating to any form of call degradation that interferes with communications between the calling and called parties, including but not limited to dead air, continuous ringing, false busy signals, incorrect calling number delivery or blocking, choking, reducing, or restricting traffic.⁵ As a bright line test of whether there has been unlawful call interference, the Commission should also adopt a new rule establishing a rebuttable presumption that a covered provider has engaged in unlawful call degradation if that covered provider receives three or more complaints during a single calendar quarter relating to some form of call degradation. Furthermore, a covered provider should no longer qualify for any safe harbor if it receives three or more complaints during a single calendar quarter relating to some form of call degradation. Under this approach, wrongdoers are more easily exposed, as the number of

³ Initial Comments at 8.

⁴ Comments of the Public Service Commission of the State of Missouri at 5.

⁵ Covered carriers should be required to establish telephone numbers and/or websites where the receipt of such complaints is recorded, and consumers should be given adequate information as to where and how to lodge complaints.

complaints and the number of degraded calls is readily identified. In addition, the complexities of call routing and the many deceptive forms of call degradation will no longer shield wrongdoers from Commission enforcement.

The Commission also seeks comments regarding the Commission's legal authority to adopt these new requirements.⁶ The Commission has authority to require telecommunications carriers to comply with Sections 201(b) and 202(a) of the Communications Act ("Act"), 47 U.S.C. §§ 201(b), 202(a).⁷ On February 6, 2012, the Commission clarified in a Declaratory Ruling 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." *Developing a Unified Intercarrier Compensation Regime*, 27 FCC Rcd 1351, 1355 ¶ 12 (2012). The Commission further clarified that "adopting or perpetuating routing practices that result in lower quality service to rural or high-cost localities than like service to urban or lower cost localities (including other lower cost rural areas) may, in the absence of a persuasive explanation, constitute unjust or unreasonable discrimination in practices, facilities, or services and violate section 202 of the Act." *Id.* at 1357, para. 14.

A carrier's failure to take corrective action to prevent call degradation also violates Sections 201(a) and 251(a)(1) of the Act. Call degradation violates a carrier's duty under Section 201(a) "to furnish such communications service upon reasonable request" and to establish "through routes" and "physical connections with other carriers." Furthermore, allowing interference with communications during calls to rural areas to go unresolved denies telephone

⁶ *FNPRM* at para. 130.

⁷ *NPRM*, 28 FCC Rcd at 1575, para. 19.

customers the intended benefits of telecommunications interconnection under Section 251(a). The Commission routinely enforces clear statutory mandates in the Communications Act. There is no reason to treat Sections 201(a), 201(b), 202(a), and 251(a)(1) any differently or to conclude that the Commission has less authority to enforce those sections than the rest of the statute.

Several sections of the Act authorize the Commission to institute proceedings like this one and adopt rules to ensure compliance with Title II of the Act. The Commission may “institute an inquiry” under Section 403 concerning “any question” that may arise under the Act or “relating to the enforcement of any of the provisions of this Act.” To ensure that carriers honor every consumer’s reasonable request to communicate with a rural area, the Commission is authorized by Section 201(a) to establish regulations requiring carriers to maintain the quality and integrity of “through routes.” The proposed requirement to retain complaints relating to call degradation is authorized by Section 220(a), which grants the Commission the discretion to prescribe the records that must be kept by carriers. The Commission also has jurisdiction to require the reporting of complaints proposed in this proceeding because Section 218 authorizes the Commission to obtain from carriers “full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.” Furthermore, Section 220(c) grants the Commission access to all information kept by carriers, including the complaints relating to call degradation that must be reported under this proposal.

The Commission also has statutory authority to apply this new rule prohibiting call degradation and requiring complaint reporting to both one-way and interconnected voice over Internet Protocol (“VoIP”) providers, even if the Commission ultimately determines that VoIP services are information services. Exercising its ancillary authority under Title I of the Act, the Commission decided “to prohibit blocking of voice traffic to or from the PSTN by [VoIP]

providers.” *Connect America Fund*, 26 FCC Rcd 17663, 18029 ¶ 974 (2011). The effective performance of the Commission’s Title II duties required the Commission to exercise its Title I ancillary authority to prohibit call impairment by VoIP providers. As the Commission explained, if it did not prohibit call impairment by VoIP providers, a telecommunications carrier could partner with a VOIP provider and ask the VoIP provider to degrade or interfere with calls to rural areas. *Id.* at 18029 n.2043. The Commission further noted that the “blocking or degrading of a call from a traditional telephone customer to a customer of a VoIP provider, or vice-versa, would deny the traditional telephone customer the intended benefits of telecommunication interconnection under section 251(a)(1).” *Id.* Just as the Commission had Title I ancillary authority to prohibit call blocking by VoIP providers, the Commission has ancillary statutory authority to prohibit call degradation by both one-way and interconnected VoIP providers. The impact of blocking and degradation is no different; consumers cannot have a telephone conversation.⁸

The Commission may employ ancillary authority when two conditions are met: (1) the Commission has subject matter jurisdiction over the service under 47 U.S.C. § 152(a) and (2) the assertion of authority is reasonably ancillary to the effective performance of the Commission’s statutory responsibilities. *United States v. Southwest Cable Co.*, 392 U.S. 157, 177-78 (1968). Both of the conditions for ancillary authority are satisfied here. First, the Commission’s subject matter jurisdiction under 47 U.S.C. § 152(a) extends to “all interstate and foreign communication by wire or radio.” Both one-way and interconnected VoIP providers are subject to the Commission’s ancillary jurisdiction because they transmit communications by wire or radio. The second condition is also met because requiring all VoIP providers to report complaints of

⁸ Indeed, the impact of degradation may be worse, because if the originating carrier treats the call as completed, it will bill its customer for it. Presumably incompleting calls are not billed.

call degradation to the Commission is reasonably ancillary to the effective performance of the Commission's responsibilities to prevent call degradation that violates Title II of the Act. The Commission clearly has authority to apply the proposed complaint retention and reporting requirements to telecommunications carriers in order to prevent call degradation that violates Sections 201(a), 201(b), 202(a), and 251(a)(1) of the Act. If the Commission ultimately decides that VoIP services are telecommunications services, the Commission would also have Title II authority to apply the proposed rules to VoIP providers. However, even if the Commission ultimately determines that VoIP services are information services, the Commission has Title I ancillary authority to apply the proposed rules to all VoIP providers.

III. The Commission Should Extend The Rules Adopted In This Proceeding To Intermediate Providers.

The Commission seeks comments on whether it should extend the data retention and reporting rules adopted in this proceeding to intermediate providers.⁹ In their Initial Comments, the Independent LECs supported the extension of the new rules to intermediate providers because intermediate providers have been identified as the root cause of call degradation.¹⁰ Therefore, the Commission should exercise its Title II and ancillary Title I authority to extend its data retention and reporting requirements to intermediate providers, just as the Commission did when applying those rules to other covered providers.¹¹ The Independent LECs also agree with the Missouri Public Service Commission that intermediate providers should be required to obtain federal and state certification to provide service.¹²

⁹ *FNPRM* at para. 122.

¹⁰ Initial Comments at 10.

¹¹ See discussion of the Commission's legal authority *supra*. pp. 5-7.

¹² Comments of the Public Service Commission of the State of Missouri at 2.

IV. The Commission Should Not Burden Terminating LECs With A New Reporting Requirement.

The Commission inquires whether terminating LECs above a certain size should be required to report their terminating call answer rate data.¹³ The Independent LECs urge the Commission to not exacerbate the burden already imposed by the rural call degradation problem by imposing another reporting requirement upon rural LECs. Frustrated when their calls do not go through, consumers mistakenly blame the terminating LECs for the failure of upstream carriers to promptly take correct actions to prevent call degradation, and complain about the reliability of the terminating LEC's service. Through their inaction and lack of cooperation, upstream service providers are wrongfully shifting the blame to the Independent LECs, permitting the Independent LECs' customers to perceive the Independent LECs as the cause of the call impairment and degradation, even though the Independent LECs' facilities are working properly. Therefore, terminating LECs have a strong incentive to voluntarily file data with the Commission, and do not need to be mandated to do so. As the Commission recognized, terminating LECs have already voluntarily filed numerous tracking reports and rural call completion complaints with the Commission.¹⁴ Given the incentives that terminating LECs have to ensure that calls are completed to their exchanges without degradation, a new reporting burden would clearly outweigh any potential benefit. However, should the Commission adopt a new reporting requirement for terminating LECs, it should extend the 100,000 subscriber line threshold for covered providers and impose that new reporting requirement only on terminating LECs with more than 100,000 subscriber lines.

¹³ *FNPRM* at para. 129.

¹⁴ *FNPRM* at para. 14.

V. Conclusion.

For the foregoing reasons, the Commission should adopt the new rules described herein.

Respectfully submitted,

By:  _____

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