



**CAROLINA WEST WIRELESS, INC.  
PETITION FOR RECONSIDERATION**

Carolina West Wireless, Inc. (“CWW”), by counsel and pursuant to Section 1.429 of the Commission’s rules,<sup>1</sup> hereby submits this Petition for Reconsideration (“Petition”) in response to the *Rural Call Completion Order* adopted by the Commission in the above-captioned proceeding.<sup>2</sup> In its *Rural Call Completion Order*, the FCC exempted providers of long-distance voice service that make the initial long-distance call path choice for fewer than 100,000 customers, including “affiliates.”<sup>3</sup> CWW submits that, for purposes of imposing the retention and reporting requirements of the *Rural Call Completion Order*, the Commission should modify the definition of “covered provider” so that the lines served by non-controlling minority owners are not counted toward the 100,000 line threshold.

CWW is a mobile wireless carrier providing service predominantly in rural areas of North Carolina. CWW serves fewer than 100,000 customer lines, but believes that it would be subject to the full scope of the new retention and reporting requirements because one or more of its minority investors provide long-distance service and make the initial call path decision for enough customer lines such that, in the aggregate, CWW and its “affiliates” would exceed the 100,000 line *de minimis* threshold.

**Background**

In its *Rural Call Completion Order*, the FCC adopted rules “to address significant concerns about completion of long-distance calls to rural areas ... [to] help ensure that long-

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<sup>1</sup> 47 C.F.R. §§ 1.429.

<sup>2</sup> In the Matter of Rural Call Completion, *Report and Order and Further Notice of Proposed Rulemaking*, WC Dkt. No. 13-39, FCC 13-135, 28 FCC Rcd 16154, rel. Nov. 8, 2013 (“*Rural Call Completion Order*”).

<sup>3</sup> *Id.* at ¶ 20.

distance calls to *all* Americans, including rural Americans, are completed.”<sup>4</sup> The Commission wisely implemented a *de minimis* exemption, applying the new rules only to “providers of long-distance service that make the initial call path choice for more than 100,000 domestic retail subscriber lines ....”<sup>5</sup>

In its *Rural Call Completion NPRM*, the Commission proposed to require “only those long-distance providers ... with more than 100,000 retail long-distance subscribers ... to retain ... and report ... [the relevant] information to the Commission.”<sup>6</sup> However, in its *Rural Call Completion Order*, the Commission determined that “[t]he 100,000-subscriber-line figure should include the total of all of a provider’s business and residential fixed subscriber lines and mobile phones, *aggregated over all of the provider’s affiliates*.”<sup>7</sup> Further, the Commission used the definition of “affiliate” set forth in 47 U.S.C. § 153(2), which defines “affiliate” as:

A person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership with, another person. For the purposes of this paragraph, the term “own” means to own an equity interest (or the equivalent thereof) of more than 10 percent.

The Commission did not explain why it changed the proposed definition of “covered providers” to include entities that control or own more than 10 percent of the long-distance provider.

## **Discussion**

CWW submits that, for purposes of imposing the retention and reporting requirements of the *Rural Call Completion Order*, the inclusion of entities that own more than 10 percent of a provider unnecessarily reduces eligibility for the 100,000 line *de minimis* exception, and thereby imposes a highly burdensome requirement on small providers with no countervailing public

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<sup>4</sup> *Id.* at ¶ 1 (emphasis in original).

<sup>5</sup> *Id.* at ¶ 20.

<sup>6</sup> In the Matter of Rural Call Completion, *Notice of Proposed Rulemaking*, WC Docket No. 13-39, FCC 13-18, 28 FCC Rcd 1568, rel. Feb. 8, 2013 (“*Rural Call Completion NPRM*”) at ¶ 31, and Appendix A, proposed rule § 64.2107(a).

<sup>7</sup> *Rural Call Completion Order* at ¶ 20 (emphasis added).

interest benefit. CWW urges the Commission to modify the definition of “covered provider” so that the lines served by non-controlling minority owners are not counted toward the 100,000 line threshold.

The overarching goal of the *Rural Call Completion Order* is to monitor and ultimately redress call completion problems to rural areas. CWW agrees with the Commission that rural call completion is a problem, and applauds the Commission for actively addressing this problem.

The Commission wisely implemented a *de minimis* threshold, so that smaller carriers would not be subject to the burden of the new data retention and reporting requirements. However, the inclusion of “affiliates”, as defined in 47 U.S.C § 153(2) to determine if a provider is eligible for the 100,000 line *de minimis* threshold, does not advance the Commission’s goal. Entities that simply own more than 10 percent of a provider, without any controlling interest, do not and cannot make the ultimate determination regarding the call routing practices of the providers in which they hold such passive investments. Relatedly, whether or not a 10% owner makes the initial call path decision for its customers has no bearing on, or relationship to, the routing decisions made by the subject carrier. The rule, as it now stands, is overly broad. For example, even a provider that does not make the initial call path decision for *any* of its customers would nonetheless be classified as a “covered provider” if its minority owners make, in the aggregate, the initial call path decision for over 100,000 customer lines. As a result, the subject carrier would have to comply with the new retention and reporting requirements despite the fact that it does not make the initial call path decision for any of its own customer lines.

The requirement to aggregate the customer lines of any and all minority owners also presents a challenge to the subject carrier: that carrier must determine if one or more of its minority owners makes the initial call path decision for some or all of its customers, and the

number of such customers. For obvious reasons, minority owners may be unwilling to disclose such confidential information.

CWW notes that it is common for rural wireless carriers to have passive investors who are themselves carriers that provide long-distance service. For example, it is not uncommon for Tier I CMRS providers (including Verizon Wireless) to hold minority interests in much smaller carriers. Under the current rules, a small carrier with well under 100,000 customer lines would be subject to the full scope of the retention and reporting requirements – regardless of how few customer lines it services – if it has a passive investment by a much larger carrier that makes the initial call routing decision for over 100,000 customer lines.

For these reasons, CWW urges the Commission to tweak the definition of “covered provider” so that the lines served by non-controlling minority owners are not counted toward the 100,000 line threshold. Specifically, CWW recommends that the definition of “covered provider” be modified as follows:

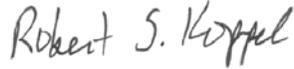
(c) *Covered provider.* The term “covered provider” means a provider of long-distance voice service that makes the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all business and residential fixed subscriber lines and mobile phones aggregated over all ~~of the provider’s affiliates~~ entities under common control with such provider.

The Commission should also delete Section 64.2101(a), which provides that the term “affiliate” has the same meaning as in 47 U.S.C. § 153(2).

## Conclusion

For the reasons set forth herein, Carolina West Wireless, Inc. urges the Commission to grant this Petition for Reconsideration by modifying the definition of “covered provider” so that the lines served by non-controlling minority owners are not counted toward the 100,000 line *de minimis* threshold.

Respectfully submitted,



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