

estimate industry-wide compliance costs imposed on covered carriers to collect, retain, and report the mandated call completion information.

I. INITIATING ENFORCEMENT ACTION BASED ON THE MANDATED RURAL CALL COMPLETION REPORTS WOULD BE PREMATURE AND UNWARRANTED.

In the *Rural Call Completion Order*, the Commission stated (para. 29):¹

The recording, retention, and reporting rules we adopt today will help us identify instances in which long-distance providers or their agents may have violated section 201(b) by blocking or otherwise restricting or degrading calls placed to rural consumers.... For example, we can use those data to evaluate provider performance and to inform enforcement actions, where necessary.

The mandated call completion reports are not an appropriate basis for enforcement actions and any such enforcement action would be premature. To date, the Commission has not defined its call completion expectations, provided any guidance about what carrier practices would constitute actionable restrictions on or degradation of calls placed to rural consumers, or even ascertained the degree to which covered carriers can control call completion to rural wireline numbers. The reports being required will not provide comprehensive data on the cause of call failures in rural areas, nor will they demonstrate the violation of any rule. Thus, raising the specter of enforcement action – including initiating resource-intensive investigations – based on the mandated reports would be inappropriate. At most, the reports can and should be used only to investigate whether a rural call completion problem exists.

If the Commission does not trust market forces to ensure a quality of service (including a level of call completion to rural wireline numbers) that is acceptable to long

¹ See also, *Rural Call Completion NPRM*, para. 19 (“call routing practices that lead to rural call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201(b), or may violate carriers’ duty under section 202(a) to refrain from unjust or unreasonable discrimination in practices, facilities, or services”).

distance service subscribers, then it should make public a list of call completion practices it deems unacceptable. Ideally, it would develop and adopt such a list through an open, public process such as a comment/reply comment/report and order cycle. This would help to ensure that interested parties can participate in the process, are informed of any new policies and standards at the same time, and have an opportunity to take appropriate steps to avoid or address the identified bad practices. It would also establish a uniform and explicit effective date for the new policies.²

Enforcement actions such as appear to be contemplated in the *Rural Call Completion Order*, in contrast, are carrier-specific, and the complete facts surrounding individual cases are rarely made public. Thus, enforcement actions tend to be less effective in helping to establish acceptable or best practices than the public development and adoption of generally applicable standards.

The Commission's decision in the *Rural Call Completion Order* to engage in potential enforcement action based on the mandated reports is highly problematic not only because of the current lack of guidance as to prohibited call completion practices, but also because the reports will not, in many cases, identify the reason a call failed to complete. As the Commission has acknowledged, "there appear to be multiple factors that cause rural call completion problems" (*Rural Call Completion Order*, para. 16), and it is clear from the record that many of the factors that lead to an incomplete call are entirely beyond the control of the long distance service provider.³

² Obviously, any new policies could not be applied retroactively.

³ See, e.g., Sprint comments, pp. 11-12. These other factors include, *inter alia*, called party actions (e.g., end user does not answer telephone and does not have answering machine or voice mail); calling party behaviors (e.g., autodialed calls programmed to hang up within certain parameters); RF factors (e.g., a mobile call drops due to propagation issues, after the called number begins to ring); TDM-IP incompatibility or

The call completion reports mandated in the *Rural Call Completion Order* will not distinguish among all of these factors, and the Commission will be largely unable to determine, based on such reports, whether a call failed to complete due to the actions/inactions of the long distance carrier, or to the actions/inactions of the calling party, the called party, the RLEC, or some other entity. Nonetheless, because the new call completion data collection, retention, and reporting rules currently apply only to covered long distance carriers, the burden of any post-report investigations and other enforcement actions (both financial and reputational) will fall squarely on the covered long distance carrier. The imposition of such a burden on one category of carriers, far disproportionate to their control over the myriad factors that can result in incomplete calls, is discriminatory and arbitrary.

If the Commission wants to deter certain call routing or completion practices which it considers unreasonable, it must inform carriers what those practices are, so that carriers can take appropriate steps to avoid or address such practices on a going-forward basis. This is more efficient than requiring carriers to speculate on what is or is not acceptable, and penalizing them after the fact. In the interest of fairness, due process, and efficiency, the Commission should on reconsider its decision to launch enforcement action based on the mandated call completion reports.

II. THE COMMISSION SHOULD MAKE THE RLEC CALL COMPLETION SURVEYS AVAILABLE FOR INDEPENDENT REVIEW, AND RE-EVALUATE INDUSTRY COMPLIANCE COSTS.

The Commission concluded, based in large part on summaries of surveys performed by the RLECs, that rural call completion problems are “serious and

encoding/decoding issues with network or end user equipment; and errors in RLEC routing tables.

widespread” (*Rural Call Completion Order*, para. 14). It also concluded that the costs imposed on covered carriers to comply with the new data collection, retention, and reporting rules are not “too burdensome” relative to the benefits resulting from the data retained (*id.*, para. 64). Sprint believes that an independent analysis of the RLEC call completion surveys, and a careful review of compliance costs that will be incurred by covered carriers, would substantially affect the Commission’s analysis and justify a narrower data collection effort. Therefore, on reconsideration, the Commission should make the RLEC surveys available in their entirety for independent review, and should estimate aggregated compliance costs for covered carriers. Based on these supplemental analyses, the Commission should reconsider whether a more limited data collection effort – for example, one-time sample studies – would be a more appropriate first step to address claimed rural call completion problems.

A. The RLEC Call Completion Surveys Should Be Subjected to Review

The Commission has stated that “...the record leaves no doubt that the problems of completing calls to rural areas...continue to be frequent and pervasive throughout rural America” (*Rural Call Completion Order*, para. 13), citing assertions by the RLECs in particular that the problem has reached “epidemic” proportions.⁴ Sprint has not, and does not, dispute that some callers have experienced problems completing calls to rural exchanges. However, as explained in earlier filings, and as demonstrated in cooperative

⁴ See, e.g., *Rural Call Completion Order*, para. 14, quoting NTCA. Although the Commission is correct that many parties assert that rural call completion problems are very serious, almost all of those parties relied upon the evidence cited in the NPRM (*viz.*, the RLEC call completion surveys and customer complaints), and did not proffer specific data of their own. One exception was the California PUC, which stated (comments, p. 2) that 10 (out of 14) California RLECs reported 213 non-terminated calls over an approximate 3 month period – an average of 7 incomplete calls per month per RLEC, which hardly constitutes an epidemic.

LEC-IXC tests conducted in Nebraska, Sprint has been unable to confirm the existence of an “epidemic.”⁵

To help confirm the validity of the information on which the Commission so heavily relied, the Commission should make the details of the RLEC surveys available for independent review. There is little downside to allowing review of the RLEC survey methodology and the detailed results of the survey (as opposed to the high-level summaries previously released). If independent analysis of the RLEC surveys confirms the RLEC claims of a serious rural call completion problem, then the Commission will have additional justification for its new data collection, retention, and reporting rules. If, on the other hand, the RLEC surveys are shown to be faulty, or overtaken by events,⁶ then less aggressive (and less costly) measures than those adopted in the *Rural Call Completion Order* may be warranted. Fact-based decision making must take into account both information which indicates a serious problem that may warrant broader measures, and information which indicates a more limited problem that may warrant more targeted measures.

B. Estimated Industry Compliance Costs Should Be Balanced Against the Benefits of New Call Completion Rules.

The Commission dismissed as “unsubstantiated” Sprint’s “contention” that the proposed rules could potentially cost billions of dollars industry-wide, stating that its rules “will apply only to providers that make the initial long-distance call path choice for

⁵ See, e.g., Sprint comments, pp. 3-11; reply comments, pp. 1-6.

⁶ One RLEC follow-up survey found significant improvement in rural call completion trends from 2011 to 2012 (see May 17, 2012 letter from Jill Canfield, NTCA and Robert Gnapp, NECA, to the NGIIF Co-chairs, p. 5). In addition, it is reasonable to expect that the on-going implementation of intercarrier compensation reforms will significantly reduce the incentive to engage in least cost routing, which the Commission and RLECs have stated is a key reason for rural call completion problems (see, e.g., *Rural Call Completion Order*, para. 17).

more than 100,000 domestic retail subscriber lines”; that the retention obligation “applies only to call attempts to incumbent LECs that are rural telephone companies”; and that “a number of potentially covered providers appear to already have in place the capability of complying with these rules.”⁷ The Commission thus concluded that “imposing a six-month retention period is not unduly burdensome, relative to the significant harm of call completion problems and the expected benefits of retaining the data and having access to the data underlying the periodic reports” (*id.*).

The Commission is correct that insufficient data has been submitted to calculate the total on-going costs likely to be incurred by covered carriers to comply with the rules adopted. However, according to the record below, numerous carriers currently do not collect at least some of the information required under the new rules,⁸ and at least 3 carriers have estimated that it would cost each of them millions of dollars to comply with the proposed rules – Sprint (\$6.8 million per year);⁹ AT&T (\$3-5 million);¹⁰ and CenturyLink (\$7.5 to \$10.5 million in non-recurring costs, and \$2.8 to \$4.3 million in annual data storage costs).¹¹ In its recent supplemental Paperwork Reduction Act

⁷ *Rural Call Completion Order*, para. 64.

⁸ *See, e.g.*, comments of Sprint, pp. 17-18; Frontier, p. 8; HyperCube, p. 14; CTIA, p. 4; Comptel, p. 7; CenturyLink, p. 12.

⁹ *See* comments of Sprint, p. 18. Sprint’s estimate was for the recurring costs it would incur to deploy and maintain a platform to collect, sort, and store for a rolling 6-month period the call data proposed in the NPRM, and the additional employee costs to prepare the requisite reports and otherwise ensure compliance.

¹⁰ *See ex parte* letter of Brian J. Benison, AT&T, to Marlene H. Dortch, FCC, WC Docket No. 13-39, dated October 23, 2013.

¹¹ *See ex parte* letter of John E. Benedict, CenturyLink, to Marlene H. Dortch, FCC, WC Docket No. 13-39, dated October 23, 2013. *See also, ex parte* letter from Michael Saperstein, Frontier, to Marlene H. Dortch, FCC, WC Docket No. 13-39, dated October 23, 2013 (Frontier believes that AT&T’s and CenturyLink’s cost estimates “provide reasonable proxies of compliance costs if proportionately scaled to the size of each carrier.... The initial set-up costs of compliance with the Commission’s proposed rules would likely be consistent regardless of the carrier’s scale”).

analysis, the Commission estimated that 225 entities would be required to file the new call completion reports.¹² All of these entities will incur some compliance costs, and some of them (like Sprint, AT&T and CenturyLink) will need to make system and/or staffing changes to comply with the new rules. Significantly, the new data collection, retention, and reporting rules do not have a sunset date,¹³ so covered carriers will continue to incur recurring compliance costs (as well as any potential pre-enforcement investigatory costs) for an indefinite number of years to come.

Costs of the magnitude estimated by Sprint, AT&T and CenturyLink, plus the (not publicly revealed) costs incurred by other carriers, incurred indefinitely, should not be lightly dismissed. Specifically, the Commission should closely scrutinize the benefits it expects from its new rules, and assess factually the relative costs and benefits of its data collection, retention and reporting rules. Given the limited information these reports will provide on the root cause of any call termination problems, and the on-going nature of these costs, the Commission should closely scrutinize the expense being imposed on consumers. If the likely costs exceed the anticipated benefits, the Commission should adopt more limited measures, such as allowing the covered carrier to perform a statistically significant sample study or to retain fewer months of data.

¹² See Notice of Public Information Collection(s) Being Reviewed by the FCC, Comments Requested, *Federal Register*, Vol. 78, No. 250, December 30, 2013, p. 79449. Sprint plans to respond to this request for comment, and expects to demonstrate that the Commission's estimates of the industry burden and cost are significantly understated.

In its Final Regulatory Flexibility Analysis (Appendix D of *Rural Call Completion Order*, paras. 12-25), the Commission also estimated that its new data collection and reporting rules "may" affect the majority of 359 interexchange carriers; several thousand incumbent LECs, competitive LECs, and prepaid calling card providers and resellers; 413 wireless carriers; and 6635 cable systems. It is not clear to Sprint whether any of the costs to any of these thousands of potentially affected carriers were included in the Commission's cost-benefit analysis.

¹³ *Rural Call Completion Order*, para. 104.

III. CONCLUSION

For the reasons discussed above, the Commission should reconsider its decision to use the required call completion reports as the basis for subsequent enforcement action; make the RLEC call completion surveys available for thorough independent review; and re-evaluate the cost/benefit ratio of the new rules.

Respectfully submitted,

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