

Before the
Federal Communications Commission
Washington, D.C. 20554

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

INITIAL COMMENTS OF
ASSOCIATED NETWORK PARTNERS, INC. AND ZONE TELECOM, INC.
ON FURTHER NOTICE OF PROPOSED RULEMAKING

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SUMMARY

In an Order issued on November 8, 2013, the Commission adopted data recording, retention and reporting rules in this proceeding to address a chronic and long standing rural call completion problem. Those rules were long delayed and are not yet effective. With the Order issued on November 8, 2013, the Commission released a Further Notice of Proposed Rulemaking (“FNPRM”) seeking comments on additional proposals to address rural call completion problems. These proposals include an intermediate provider certification program proposed earlier in this proceeding by Associated Network Partners, Inc. and Zone Telecom, Inc. (“ANPI”) to address call quality problems resulting from economic incentives to bypass intercarrier compensation systems.

The Commission should adopt the intermediate provider certification program, as further advocated and qualified by ANPI herein, as a supplement to the data recording, retention and reporting rules that do not apply to intermediate providers which, as the Commission has already found, are a key reason for rural call completion problems. The intermediate provider certification program advocated by ANPI would fill this yawning regulatory gap and require no delay in the effectiveness of the data recording, retention and reporting rules applicable to “covered providers.” Each intermediate provider should be required to certify, or otherwise definitively prove, that it is terminating traffic in compliance with all applicable intercarrier compensation orders, tariffs and agreements. All intermediate providers should be required to include in their certifications the filer identification numbers (“Filer ID”) that all providers of telecommunications are required to obtain from the Universal Service Administrative Company.

The Commission should not adopt any of the other proposals set forth in the FNPRM at this time. Such proposals are at best premature and at worst counterproductive. The Commission should not allow its consideration of any FNPRM proposal to delay the effectiveness of the rules it has already adopted.

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INTRODUCTION

Associated Network Partners, Inc. and Zone Telecom, Inc. (hereafter “ANPI” or “Company”) respectfully submit their initial comments on the Further Notice of Proposed Rulemaking (“FNPRM”) issued by the Federal Communications Commission (“FCC” or “Commission”) on November 8, 2013 in this proceeding.¹ ANPI supports, in particular, the Commission’s proposal in the FNPRM to develop a record necessary to decide “whether we should impose certifications or other obligations on intermediate providers.”² As the Commission noted in the FNPRM, ANPI previously proposed “intra-industry compliance certification as a supplement to the data collection, retention and reporting adopted in the

¹ *In the Matter of Rural Call Completion*, WC Docket 13-39, Report and Order and Further Notice of Proposed Rulemaking, released November 8, 2013 (FCC 13-135), 78 Fed. Reg. 76257 (FNPRM); 78 Fed. Reg. 76218 (Report and Order and Rules) (December 17, 2013). (“Order and FNPRM”). Citations herein are to paragraph numbers in the combined Order and FNPRM issued by the Commission on November 8, 2013 (FCC 13-135).

² Order and FNPRM, ¶ 123.

Order.”³ ANPI submits comments herein primarily on the issues raised in the FNPRM on ANPI’s certification proposal.

ANPI provides carrier services to hundreds of telecommunications providers throughout the United States, including Tier 1, Tier 2 and Tier 3 carriers. The Company is the largest provider of long-distance telecommunications services to domestic independent telephone companies. ANPI has been in continuous operation since 1996. The Company’s members and owners include hundreds of independent telephone companies providing local exchange service in rural areas throughout the country. ANPI and its members annually carry billions of minutes of telecommunications. Thus, ANPI has considerable experience with rural telephone service. ANPI proposed an intra-industry certification program in this proceeding based on its experience with the call completion problems of rural local exchange carriers that ANPI serves.

DISCUSSION

A. The Commission Can and Should Adopt an Intra-Industry Certification Rule that Covers Intermediate Providers

The Commission has already determined that a “key reason” for the rural call completion problem “is that a call to a rural area is often handled by numerous different providers in the call path.”⁴ However, the Commission declined to apply any of the data recording, retention and reporting rules it adopted in this proceeding to such intermediate providers. In the FNPRM, the Commission seeks comment on whether it should extend the rules to intermediate providers, and whether doing so would reduce or eliminate the burden of the adopted rules on originating or “covered” providers.⁵

³ Id., citing ANPI’s May 13, 2013 Comments at 9, and ANPI’s June 11, 2013 Reply Comments at 12, in this docket (hereafter “ANPI Comments” and “ANPI Reply Comments” respectively).

⁴ Order and FNPRM, ¶ 17.

⁵ Id. at ¶ 122.

In order to make the adopted rules applicable to intermediate providers, the Commission would have to abandon the definition of “covered provider” it has already embraced, including its limitation to the “provider of long-distance voice service that makes the initial long-distance call path choice.”⁶ ANPI does not favor this approach because it would inevitably require either a delay in the effectiveness of the adopted rules, which have been too long delayed already, or significant and potentially disruptive changes to the adopted rules after they have gone into effect. Moreover, mere extension of the adopted rules, or a subset thereof, to intermediate carriers could not, in and of itself, serve as a justification to reduce or eliminate the data recording, retention and reporting requirements on originating providers.⁷

In contrast, adoption of an intra-industry compliance certification program applicable to intermediate providers should result in no delay in the effectiveness of the adopted rules, or to any potentially confusing changes to the adopted rules after they have become effective. A compliance certification program applicable to intermediate providers is a supplemental requirement that would add to but not modify any of the data recording, retention and reporting rules the Commission has already adopted for “covered providers.” Moreover, the program would effectively fill a yawning gap in the adopted rules by subjecting intermediate providers, and the admittedly critical role they play in rural call completion problems, to an effective regulatory program.

The Commission specifically asks whether it should “require each intermediate provider offering to deliver traffic for termination for another provider, or offering to deliver traffic for

⁶ See Section 64.2101(c) of the rules adopted by the Order. Sections 64.2103, 64.2105 and 64.2107 of the rules adopted on November 8, 2013, which are the substantive data recording, retention and reporting requirements, are not effective until announcement in the Federal Register of Office of Management and Budget approval and an effective date of those rules. Order and FNPRM at ¶ 142. Such an announcement has yet to be published. The ringing indication requirements in Section 64.2201 of the rules adopted by the Order go into effect on February 1, 2014, i.e., 45 days after publication of that rule in the Federal Register. *Id.*

⁷ Since ANPI does not favor this proposal as a matter of regulatory policy, it does not address the Commission’s authority to extend the data recording, retention and reporting rules to intermediate carriers.

termination that is originated by an entity other than the end users it serves, to certify that it is terminating such traffic in compliance with all applicable intercarrier compensation orders, tariffs and agreements.”⁸ ANPI respectfully submits that the Commission should adopt such a supplemental requirement. For enforcement purposes, the Commission should require that each such certification include the filer identification number (“Filer ID”) that the intermediate provider of telecommunications is obligated to obtain from the Universal Service Administrative Company (“USAC”). The Commission should further require that such certifications be retained by the recipients and providers thereof for a minimum of three years. Failure to produce on request of the Commission a certification with a valid Filer ID obtained from USAC should be considered a violation of this requirement.

In adopting this requirement the Commission should make it clear that any false certifications would be subject to the full range of penalties available to the Commission, as if the certifications were being made directly to the Commission itself. In particular, certifications should be subject to Sections 1.16 (unsworn declarations under penalty of perjury) and 1.17 (truthful and accurate statements to the Commission) of the FCC’s rules. 47 C.F.R. §§1.16, 1.17. In addition, false certifications should be grounds for revocation of Section 214 authorizations. Although Section 63.01 of the Commission’s rules, 47 C.F.R. §63.01, automatically grants Section 214 authorization to provide domestic interstate communications service in order to facilitate competitive entry, that rule should not be interpreted to preclude revocation of that authorization for knowingly false certifications that are the equivalent of lying to the Commission.⁹

⁸ Order and FNPRM at ¶ 123; *see also* ANPI Comments at 9-10 and ANPI Reply Comments at 12-13.

⁹ There is no automatic grant of Section 214 authority for international communications service and such authority generally requires application to and formal approval by the Commission. *See* 47 C.F.R. §63.18.

The Commission further specifically asks in the FNPRM whether each intermediate provider should be “required to obtain and file similar certifications from companies to which it is directing traffic for the purpose of terminating to the PSTN and to rural incumbent LECs in particular.”¹⁰ ANPI respectfully submits that the Commission should adopt the essence of such a supplemental requirement with two qualifications. First, intermediate providers should not be required to file such certifications routinely with the Commission. Rather, they should be required to produce such certifications on demand of the Commission in connection with any investigation or enforcement action conducted by the Commission as to which such certifications may be relevant. A routine filing requirement would place an unwarranted burden on service providers and could inundate the Commission with unnecessary filings.

Second, an intermediate provider should not be expected to obtain certifications from all companies to which it is directing traffic when, due to lack of contract privity, or for other reasons, it is impractical to obtain such a certification. Therefore, as an alternative to obtaining certification from all companies to which an intermediate provider is directing terminating traffic, the Commission should allow an intermediate provider to produce definitive proof that it is complying with intercarrier compensation requirements in its routing of terminating traffic. Such definitive proof should include, but not necessarily be limited to, verified placement of calls through the Carrier Access Billing System (“CABS”) process, or through Feature Group D toll trunks.

If required by the Commission, certifications of compliance would likely become an obligation under contracts for service. However, in ANPI’s view, the Commission should not leave enforcement of the obligation to private contractual remedies. An individual service provider may or may not be motivated to expend the resources necessary to enforce whatever

¹⁰ Order and FNPRM at ¶ 123.

remedies are available under a specific contract. The Commission should retain authority to enforce the certification requirement through its own remedies, including, if warranted, revocation of Section 214 authorization to provide domestic interstate and international services.

In the FNPRM, the Commission also specifically seeks comment on ANPI's proposal "that it would be unlawful for any intermediate provider that refuses to provide such a certification to carry traffic for termination on the PSTN, and it would be unlawful for any provider to direct such traffic to such a non-complying carrier."¹¹ ANPI respectfully submits that the essence of such a requirement is necessary for a strong certification program. Intermediate providers must know the applicable intercarrier compensation orders, tariffs and agreements, and they should be under no illusion that they can avoid a knowingly false certification of compliance with such requirements by refusing to provide a valid certification. Moreover, originating providers should be under no illusion that they can lawfully direct traffic to intermediate providers that do not certify or otherwise definitively prove compliance with all applicable intercarrier compensation orders, tariffs and agreements. An outright refusal to certify (or an invalid certification that does not include a Filer ID) implies that the intermediate provider will avoid compliance with applicable intercarrier compensation orders, tariffs or agreements to provide service at the rates it offers.

Finally, the Commission asks whether it should "require intermediate providers to include in their rate decks a statement of the maximum number of intermediate providers they will use to deliver a call to a particular area."¹² ANPI respectfully submits that such a requirement would be inconsistent with the fundamental premise of the certification regulation program. The efficacy of the certification program depends not on the number of intermediate

¹¹ *Id.*; see also ANPI Reply Comments at 13.

¹² Order and FNPRM at ¶ 123.

providers involved in terminating a call, but on the binding and enforceable commitment of each such provider to know and abide by applicable intercarrier compensation orders, tariffs and agreements.

ANPI recognizes that the “maximum number” issue the Commission has raised is an implicit outgrowth of an already adopted rule. That rule allows reduced data recording, retention and reporting for “covered providers” that certify use of no more than two intermediate providers for call terminations.¹³ This “safe harbor” stems from the Commission’s belief that reducing the number of intermediate carriers that are involved in terminating a call will ameliorate rural call completion problems. Whether this “safe harbor” will influence service providers seeking the lowest cost means to terminate calls, regardless of the number of intermediaries involved, or have any significant impact on rural call completion problems, remains to be seen. What is clear, however, is that the certification program advocated by ANPI proceeds from the fundamentally different premise that binding and enforceable commitments by intermediate carriers to abide by applicable intercarrier compensation orders, tariffs and agreements, or to produce definitive proof of compliance with such requirements, will ameliorate rural call completion problems caused by economic incentives to bypass such requirements. In ANPI’s view, the Commission should not add requirements to a supplemental certification program that are inconsistent with the fundamental premise of the program.

In addition, such a requirement would present significant practical and administrative problems. Regardless of the “maximum number” of intermediate providers that may be stated, an RLEC terminating the call would have no way knowing how many intermediate providers were actually deployed before the call was delivered to the RLEC. Moreover, unless an intermediate provider were using Feature Group D (“FGD”) direct termination routes

¹³ See Section 64.2107 of the rules adopted by the Order.

exclusively, it could not practically or credibly support a certification to the use of a specified maximum number of intermediate providers that would participate in the termination of a call. As the Commission is well aware, FGD connections are not the only lawful means through which calls may be terminated. In light of these significant problems, as well as the inconsistency of the proposed requirement with the premise of the certification program, the Commission should not adopt the “maximum number” proposal.

As ANPI has previously pointed out,¹⁴ certification regulation of intermediate providers is analogous to the certification program long employed for the Commission’s Form 499 universal service assessment program. In order to determine whether revenues from resellers are exempt from universal service assessments, the Commission has allowed any entity filing a Form 499 to rely on a certification from a company purchasing service that “either the company contributes directly to the federal universal support mechanisms, or that each entity to which the company provides resold telecommunications is itself an FCC Form 499 worksheet filer and a direct contributor to the federal universal service support mechanisms.”¹⁵ The certification is required “under penalty of perjury” and copies of all such certifications must be made available on request of the Commission.¹⁶ Thus, the industry already has long and considerable experience in obtaining numerous service provider certifications comparable to the intermediate provider certifications the Commission should require in this proceeding.¹⁷ The proposed certification program would not require the Commission or the industry to navigate unfamiliar territory, and the program would fill a critical gap in the rural call completion rules adopted by

¹⁴ ANPI Reply Comments at 15.

¹⁵ 2013 Telecomm. Reporting Worksheet Instructions (FCC Form 499-A) at 23.

¹⁶ See, *In the Matter of Universal Service Contribution Methodology*, WC Docket No. 06-122, Order, (FCC 12-134) at ¶¶ 37-42, 27 F.C.C.R. 13780, 2012 WL 5419336 (Nov. 5, 2012) (“2012 *Wholesaler-Reseller Clarification Order*”).

¹⁷ See, *Wholesaler-Reseller Clarification Order*, at ¶ 41, n.113 (“Several commenters . . . note that they obtain certifications from thousands of resellers.”).

the Commission. Those rules do not subject intermediate providers to any effective regulatory program, despite the critical role they play in terminating calls to the PSTN.

B. The Commission Should Not Require All Covered Providers to Segregate Auto-Dialer Traffic from Other Traffic for Reporting Purposes at this Time.

The rules adopted by the Commission allow but do not require covered providers to file a separate report in which auto-dialer traffic is segregated from other traffic. The Commission now seeks comment on whether it should require all covered providers to file such separate reports.¹⁸ The record does not show that all providers are capable of reliably distinguishing auto-dialer traffic from other traffic.¹⁹ Accordingly, the Commission should not require all covered providers to file such separate reports at this time. Moreover, the Commission should not delay the effectiveness of the rules it has adopted in order to consider this issue.

C. The Commission Should Not At This Time Modify or Expand the “Safe Harbors” It Has Adopted.

The Commission seeks comment on whether it should modify the existing data recording, retention and reporting “safe harbors” it has adopted, and whether it should add new “safe harbors” to the rules.²⁰ As previously noted herein, the “safe harbors” already adopted by the Commission are based on the premise that rural call completion problems will be ameliorated if no more than two intermediate providers are involved in terminating calls. It remains to be seen whether this premise will prove to be true. Before considering modification of the existing “safe harbors” or additional “safe harbors,” the Commission should gain experience with the efficacy of the “safe harbors” it has already adopted. Moreover, the Commission should not delay the effectiveness of the rules it has already adopted in order to consider modifications of or additions to the “safe harbors” it has approved.

¹⁸ Order and FNPRM at ¶ 121.

¹⁹ *Id.* at ¶ 120.

²⁰ Order and FNPRM at ¶¶ 124 – 127.

D. The Commission Should Not At This Time Require Rural ILECs Above a Certain Size to Report Terminating Call Answer Rate Data.

Under the reporting regime the Commission has adopted, rural ILECs are encouraged but not required to report terminating call answer rate data to the Commission.²¹ The Commission now seeks comment on whether it should require rural ILECs above a certain size to report their terminating call answer rate data to the Commission.²² Rural ILECs who are capable of collecting and reporting such data to the Commission, and who are experiencing call completion problems, have a natural incentive to report such data to the Commission regardless of their size. Rural ILECs who are incapable of collecting and reporting such data to the Commission, or who are not experiencing call completion problems, should not be required to report such data to the Commission regardless of their size. Accordingly, size is not a relevant consideration for rural ILEC reporting and the Commission should not require such reporting for rural ILECs above a certain size. Moreover, the Commission should not delay the effectiveness of the rules it has adopted to consider this issue.

Nor should the Commission delay the effectiveness of the rules it has adopted to consider any additional rule changes or clarifications it has invited parties to propose.²³ The Commission asks whether it should codify in rules the existing prohibition on blocking, choking, reducing or restricting traffic. This formality should not be allowed to delay the effectiveness of the adopted rules. The Commission also asks whether there are any other additional requirements it should adopt. To the extent that this open-ended invitation generates additional proposals, the Commission should not allow consideration of such proposals to delay the effectiveness of the

²¹ Id. at ¶ 128.

²² Id. at ¶ 129.

²³ *See* Order and FNPRM at ¶ 130.

adopted rules. The Commission should allow the adopted rules, which have been too long delayed already, to go into effect as soon as legally permissible.

CONCLUSION

For the reasons stated herein, ANPI respectfully submits that the Commission should adopt a certification proposal for intermediate providers, as advocated and explained by ANPI herein, as a supplement to the data recording, retention and reporting rules already approved by the Commission in this proceeding. Adoption of the certification proposal for intermediate providers in due course requires no delay in the effective date of the data recording, retention and reporting rules for "covered providers" already adopted by the Commission. In advance of gaining experience with the efficacy of the latter rules, the Commission should not adopt any of the other proposals on which it has asked for comment in the FNPRM, and should not delay the effectiveness of the rules it has already adopted in order to consider such other proposals.

Respectfully submitted,



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