

Executive Summary

The Rural Associations (NECA, NTCA, ERTA and WTA) oppose the Petitions for Reconsideration filed by the Sprint Corporation (Sprint) and Transcom Enhanced Services, Inc. (Transcom). We further urge the Commission to carefully consider the impacts of the USTelecom/ITTA Petition, as presented.

The Sprint Petition requests that the Commission: reconsider its decision to use data collected, via the new rules, for enforcement purposes; release the call completion surveys submitted to the Commission for independent review; and, reevaluate the reporting requirements and take into consideration an analysis of the costs to providers versus the benefits of the rules. The Petition is opposed as the Rural Associations believe: the use of call reporting data is essential to the targeted enforcement call completion problems; the Commission has undeniably demonstrated the existence of a “serious and widespread” rural call completion problem; and, the Commission has rightfully determined the “significant harm of call completion problems” outweigh the costs of the rules.

Transcom’s Petition, requesting that the false ring tone rule (47 C.F.R. § 64.2201(b)) be revised to only be applicable to common carriers, is opposed as the Petition is not eligible for reconsideration pursuant to 47 C.F.R § 1.429(b) and the Rural Associations maintain that the false ring tone rule is lawfully imposed on intermediate providers, such as Transcom.

Finally, the USTelecom/ITTA Petition, over broadly requests reconsideration/waiver of the requirement to include all intraLATA data in the call completion reports. If the Commission does consider the USTelecom/ITTA Petition, we urge the Commission to narrowly tailor any revisions/waivers to include only “on-network” intraLATA traffic that is originated by the LEC’s retail customers and carried entirely over that originating carrier’s network or is passed directly from the originating carrier to a terminating carrier.

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November 8, 2013 *Report and Order*⁴ in the above-captioned proceeding.

In particular, the Rural Associations oppose Sprint's Petition,⁵ requesting that the Commission: reconsider its decision to use data collected, via the new rules, for enforcement purposes; release the call completion surveys submitted to the Commission for independent review; and, reevaluate the reporting requirement and take into consideration an analysis of the costs imposed on providers versus the benefits of the new rules. The Rural Associations also oppose Transcom Enhanced Services Inc.'s (Transcom) Petition for Reconsideration⁶ in which it erroneously claims the Commission is unlawfully imposing common carriage requirements on non-carriers.

Finally, the Rural Associations maintain the Commission should not make changes to its new call completion rules until it collects and analyzes a year's worth of call data. If, however, the Commission considers the USTelecom/ITTA Petition,⁷ the Rural Associations urge the Commission to limit any revision/waiver to intraLATA traffic that is originated and carried entirely over an originating LEC's network or is passed directly from an originating carrier to a terminating carrier.

some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

⁴ *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 16154 (2013) (*Order*).

⁵ Sprint Corporation, Petition for Reconsideration, WC Docket No. 13-39 (filed Jan. 16, 2014) (*Sprint Petition*).

⁶ Transcom Enhanced Services, Inc., Petition for Reconsideration, WC Docket No. 13-39 (filed Jan. 14, 2014) (*Transcom Petition*).

⁷ USTelecom and ITTA, Petition for Reconsideration or Waiver, WC Docket No. 13-39 (filed Jan. 16, 2014) (*USTelecom/ITTA Petition*).

I. THE COMMISSION SHOULD DENY SPRINT’S REQUESTS REGARDING: USE OF REPORTING DATA IN ENFORCEMENT ACTIONS; INDEPENDENT REVIEW OF CALL COMPLETION SURVEYS; AND, A NEW COST/BENEFIT ANALYSIS BY THE COMMISSION.

Sprint’s Petition asks the Commission to revisit three separate decisions set forth in the Order. First, Sprint asks the Commission to reconsider its decision to use the call data collected from covered providers for possible enforcement actions.⁸ Second, Sprint asks the Commission to permit an independent review of call completion surveys that the Commission relied on, in part, in promulgating its rural call completion rules.⁹ Finally, Sprint requests that the Commission reconsider application of the new rules by balancing the costs of complying with the new call completion rules against the benefits of the rules.¹⁰

The Commission should deny Sprint’s Petition. First, it is essential that the Commission make use of data obtained via its new reporting rules to enforce its rules and policies governing call completion. As Sprint itself has previously suggested, resolution of the rural call completion problem requires “targeted enforcement” efforts.¹¹ As the Order states, call completion reports are intended to help

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. Once such instances have been identified, we can then intelligently marshal our resources. For example, we can use those data to evaluate provider performance and to inform enforcement actions, where necessary.¹²

⁸ *Sprint Petition* at 4.

⁹ *Id.* at 6.

¹⁰ *Id.* at 8.

¹¹ See Comments of Sprint Corporation, WC Docket 13-39, at 15, 22-24 (May 13, 2013) (*Sprint Comments*); Reply Comments of Sprint Corporation, WC Docket 13-39, at 2,7 (June 11, 2013) (*Sprint Reply Comments*).

¹² *Order* ¶ 29.

In other words, the Commission wants to use the reported call completion data for just the type of targeted enforcement envisioned by Sprint. It is plainly in the public interest for it to do so.

Second, there is no longer any serious question that rural call completion problems must be addressed. The Order cites numerous sources of information showing that rural call completion problems are “serious and widespread.”¹³ The Commission has also rejected claims by commenters (including Sprint) questioning the extent of the problems, and Sprint’s Petition provides no basis for revisiting this conclusion.¹⁴ The only purpose that can be served by allowing independent reviews of the call completion survey data is to delay a decision the Commission has already made; not to provide the Commission with new information. There is no justification for any further delay in resolving these problems.¹⁵ In any event, the Commission has already stated it will use the call completion data that will be reported to “revisit [the] rules in the future as warranted by the data ... which should provide evidence regarding the scope and extent of call completion problems over time.”¹⁶

Similarly, there is no basis for the Commission to re-evaluate the costs and benefits of imposing new data retention and reporting requirements. In support of this request, Sprint simply rehashes its prior arguments that the costs of compliance outweigh any potential benefit

¹³ *Id.* ¶¶ 14-15.

¹⁴ *Id.* ¶ 15.

¹⁵ Sprint asserts it wants to review the surveys to “help confirm the validity of the information on which the Commission so heavily relied,” (*Sprint Petition* at 6) However, as the Order notes, there are numerous other indications and evidence the Commission relied on to ensure that there was in fact a “serious and widespread” rural call completion problem. *See Order* ¶¶ 14-15.

¹⁶ *See id.* ¶¶ 15, 105.

to end users.¹⁷ The Commission considered and rejected Sprint’s claims in this regard as “unsubstantiated” and “based on several erroneous assumptions.”¹⁸ The Order also notes that Sprint failed to distinguish between one-time costs and recurring costs, and did not account for the fact that some providers already collect the data required to be submitted in the reports.¹⁹

None of the additional information provided by Sprint in its Petition should cause the Commission to revise its decisions. The argument that the rules will impose compliance costs on Sprint and other providers has already been presented before the Commission,²⁰ yet the Commission still determined that the “significant harm of call completion problems”²¹ that result in “public interest ramifications, [such as] causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and creating potential for dangerous delays in public safety communications in rural areas” had to be addressed.²²

As for Sprint’s request for the Commission to establish a sunset date for the reporting requirements, the Commission laid out its rationale for declining to do so.²³ The Order did, however, establish the circumstances through which interested parties, such as Sprint, will be able to comment on the effectiveness of the rules and whether reporting requirements should be

¹⁷ See *Sprint Comments* at 18, *Sprint Reply Comments* at 2. In its Petition, Sprint also references ex partes providing alleged annual compliance costs of AT&T and CenturyLink. (*Sprint Petition* at 7).

¹⁸ *Order* ¶ 64.

¹⁹ *Id.* at n. 179.

²⁰ See *Sprint Petition* at 7.

²¹ *Order* ¶ 64.

²² *Id.*, App. D, ¶ 2.

²³ *Id.* ¶ 104.

reduced or eliminated after the Wireline Competition Bureau issues a report on the first two-year reporting period.²⁴

II. THE COMMISSION SHOULD DENY TRANSCOM'S REQUEST TO AMEND 47 C.F.R. § 64.2201(b).

In its Petition for Reconsideration, Transcom claims the new false ring tone rule established by the Order, 47 C.F.R. § 64.2201(b), unlawfully imposes common carrier obligations on non-carriers, and claims the rule prohibits the deployment and delivery of enhanced/information services.²⁵ Transcom's Petition, however, raises these allegations for the first time in this proceeding and thus are barred.²⁶ If the Commission nevertheless decides to consider Transcom's Petition, however, it should reject Transcom's dubious claim that it is an end user, consistent with positions taken by the Commission before the 10th Circuit.²⁷ The Commission should also affirm that the false ring tone rule is lawfully imposed on intermediate providers, such as Transcom, who may not originate or terminate traffic but do play a critical role in carrying traffic that traverses the PSTN.²⁸

A) Transcom's Petition for Reconsideration is not properly before the Commission.

Transcom claims that it was not a party to the rural call completion proceeding prior to the issuance of the Order, with the exception of a letter from Transcom referenced in both the NPRM and the Order, and that it is filing its Petition for Reconsideration because it wants to

²⁴ *Id.* ¶ 105.

²⁵ *Transcom Petition* at ii.

²⁶ 47 C.F.R. § 1.429(b).

²⁷ *Federal Respondents' Final Response to the Transcom Principal Brief* at 15, IN RE: FCC 11-161 (No. 11-9900)(Jul. 24, 2013) (*FCC Response Brief*).

²⁸ 47 U.S.C. §§ 152(a), 201(b), 217; 47 C.F.R. §§ 64.1600(f), 64.2010(e).

“preserve the right to judicial review.”²⁹ From these Commission references, it appears that Transcom was or should have been on notice that its interests might be affected by an Order issued during the proceeding. Therefore, its arguments should be rejected as being raised too late. Section 1.429(b) generally prohibits parties from relying on new facts or arguments in a Petition for Reconsideration.³⁰ None of the circumstances in which new arguments may be considered apply here.³¹ Given that Transcom was, or should have been, aware that the Commission was working on solutions to the rural call completion problem,³² it had ample time to raise its concerns during the comment and reply comment period. Accordingly, the Commission should reject Transcom’s Petition.³³

B) Transcom is not an “End User.”

Transcom supports its argument that it is not a carrier or an intermediate provider of telecommunications services subject to Title II common carriage regulations by claiming it is an enhanced service provider (“ESP”)³⁴ and thus an “end user.”³⁵ However, as the Commission

²⁹ *Transcom Petition* at 1-2.

³⁰ 47 C.F.R § 1.429(b).

³¹ 47 C.F.R § 1.429(b)(1-3). New facts or arguments are only permitted if the: facts relate to events or circumstances that have changed; facts were unknown to the petitioner and petitioner could not have reasonably learned of facts with due diligence; and, the Commission determines that consideration of the new facts or arguments is in the public interest. None of these circumstances apply here.

³² See Letter from Steven Thomas, Counsel for Transcom Enhanced Services, Inc., to William Dever, Chief, Competition Policy Division, Wireline Competition Bureau, FCC, at 4 (filed Oct. 17, 2011).

³³ See e.g., *Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems*, WT Docket No. 04-344, Memorandum Opinion and Order, 26 FCC Rcd 8122 (2011) ¶ 13.

³⁴ The Act utilizes the term “information services”, which largely encompasses the earlier Commission term “enhanced services.” See, e.g., *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Comms. Act of 1934*, First Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd. 11230 (1996) ¶ 103.

notes in its brief filed in the Tenth Circuit proceeding regarding Petitions for Review of the USF/ICC Transformation Order, this claim makes no sense.³⁶ For example, the Commission notes that a teenager calling her grandmother expects to have the call terminated at her grandmother's residence, not a Transcom facility involved in the call routing. The true end users (the teenager and grandmother) have no knowledge of Transcom's, or any other intermediate provider's, involvement in getting the call to the final destination.³⁷

As a self-described ESP, Transcom also protests that imposition of the false ring tone rule will prohibit it from developing and deploying new enhanced services.³⁸ Regardless of what Transcom chooses to label itself, the Commission reasonably found that the benefits of requiring carriers and intermediate providers to transmit accurate and non-misleading ring-back tones during call set-up outweigh any costs imposed by the rule.³⁹ Transcom fails to identify any service it provides or will provide that is prohibited by the rule but that would produce benefits outweighing the public interest harms associated with false ring-back tones. The fact such a service might theoretically be developed in the future certainly doesn't justify reconsideration of the rule at this juncture. If Transcom can make such a demonstration, it remains free to request a waiver of the rule.

C) The Commission's Title I ancillary jurisdiction provides authority to impose the false ring tone rule on intermediate providers.

Even if Transcom does not provide its services on a common carriage basis, the Commission has ample authority under its Title I ancillary authority to support application of its

³⁵ *Transcom Petition* at 2.

³⁶ *FCC Response Brief* at 5-7.

³⁷ *Id.* at 7.

³⁸ *Transcom Petition* at 8.

³⁹ *Order* ¶¶ 114-115.

call completion rules to intermediate providers such as Transcom.⁴⁰ As indicated previously, the Commission has direct authority pursuant to Title II of the Act to ensure that voice traffic carried by telecommunications carriers is actually completed, without deceiving end users placing the calls.⁴¹ In order to ensure that its Order and rules are effective, the Commission needs to ensure that no company handling such calls can undermine this public interest goal. As the Commission notes, “excluding [non-carrier intermediate] providers from the prohibition against false audible ringing would undermine the effectiveness of the rule, as well as the Commission’s ability to ensure that carrier practices are both just and reasonable.”⁴² As such, the Commission’s exercise of its ancillary authority is necessary to achieve its direct statutory authority, and thus permissible under the statute.⁴³

Transcom’s claim that the Commission’s assertion of Title I authority is invalid because there is no “limiting principle” to the false ring tone rule is baseless.⁴⁴ In support of this claim, Transcom provides an admittedly unrealistic hypothetical suggesting the Commission could just as easily require all end users to retain call records.⁴⁵ But, 47 C.F.R. § 64.2201(b) is easily distinguishable because the rule is limited to a certain classification of carriers and intermediate

⁴⁰ *Id.* ¶ 117.

⁴¹ 47 U.S.C. §§ 201, *et seq.*; The Commission’s Title II regulations are often indirectly imposed on agents and/or intermediate providers because the Act makes a carrier liable for the actions of its agents as if those actions were the carrier’s own (47 U.S.C. § 217). As a result, carriers are precluded from hiring intermediate providers who do not abide by the Commission’s rules. *See e.g., Level 3 Communications, LLC*, EB-12-IH-0087, Order, 28 FCC Rcd. 2274 (Enforcement Bur. 2013); *Windstream Corporation*, EB-IHD-13-00011781, Order, DA 14-152 (Enforcement Bur. 2014). In the two known consent decrees involving rural call completion problems, the Commission requires Level 3 and Windstream to cease using intermediate providers with poor call completion performance.

⁴² *Order a* ¶ 117.

⁴³ *American Library Ass’n v. FCC*, 406 F.3d 689, 700–03 (D.C. Cir. 2005).

⁴⁴ *Transcom Petition* at 10-11.

⁴⁵ *Id.* at 10.

providers that are in a unique position to comply with the rule requiring that call originators only receive a ringing signal when the call has actually been connected to the terminating switch.⁴⁶ If entities such as Transcom, were not subject to the false ring tone rule, the practice of providing a false ring signal to an end user will likely continue and the Commission will be no closer to resolving this important piece of the rural call completion problem.

III. THE COMMISSION SHOULD BE WARY OF REVISING CALL COMPLETION RULES BEFORE HAVING THE OPPORTUNITY TO ANALYZE DATA.

The USTelecom/ITTA Petition requests that the Commission revise its rules to exclude or waive the requirement that covered providers include data from intraLATA interexchange/toll calls in the call completion reports submitted to the Commission.⁴⁷

As USTelecom/ITTA acknowledges,⁴⁸ the Commission considered the issue of intraLATA traffic carried entirely over an originating provider's network or handed off directly from the originating provider to the terminating provider in the Order and decided that even though such traffic "would not likely cause call completion problems" it still wanted the data to use as an "important benchmark for issue-free performance."⁴⁹ Further, the USTelecom/ITTA Petition appears to be much broader than the exception already rejected by the Commission as it requests a reconsideration/waiver of the rules for all intraLATA traffic.⁵⁰ The Rural Associations believe there is a significant amount of intraLATA traffic that is also handled by

⁴⁶ 47 C.F.R. § 64.2201(b).

⁴⁷ *USTelecom/ITTA Petition* at 3, 6.

⁴⁸ *Id.* at 5.

⁴⁹ *Order* ¶ 51.

⁵⁰ While the text of the USTelecom/ITTA Petition appears to focus "on-network traffic," the actual requests are for the exclusion of all intraLATA traffic. *Supra*, n. 47.

intermediate providers and thus a factor in the rural call completion problems the Commission's Order is intended to curtail.

In recent reply comments in this proceeding, the Rural Associations suggested the Commission should consider waiting “until it has implemented [the] rules and gathered, reviewed, and analyzed at least one year’s worth of call completion data before considering whether to revise these nascent rural call completion requirements.”⁵¹ This suggestion also applies as the Commission weighs the merits of the USTelecom/ITTA Petition. However, should the Commission choose to consider the USTelecom/ITTA Petition, the Rural Associations urge the Commission to narrowly tailor any revisions/waivers to encompass only the intraLATA traffic that is originated by the LEC’s retail customers and carried entirely over that originating carrier’s network or is passed directly from the originating carrier to a terminating carrier. All traffic involving any third party intermediate providers, or originated by other providers, should be included in the data retention and reporting requirements imposed by the rules.

IV. CONCLUSION

For all of the reasons stated herein, the Rural Associations urge the Commission to deny Sprint’s requests that the Commission: disallow the use of data collected as a result of the call reporting requirements for enforcement purposes; allow for independent review of call completion studies used by the Commission in investigating the rural call completion problem; and reevaluate the Order’s reporting requirements, taking into consideration an analysis of the costs imposed on providers versus the benefits of the new rules. The Commission should also

⁵¹ Reply Comments of NECA, NTCA, ERTA, and WTA, WC Docket No. 13-39, at 1 (filed Feb. 18, 2014).

deny Transcom's request to amend 47 C.F.R. § 64.2201(b) to state that it is only applicable to common carriers. Finally, the Commission should have the opportunity to analyze at least a year's worth of data before changing the reporting requirements, as proposed by USTelecom/ITTA. However, if it does consider the USTelecom/ITTA Petition, the Commission should narrowly tailor any revisions/waivers to encompass only the intraLATA traffic that is carried entirely over an originating carrier's network or is passed directly from an originating carrier to a terminating carrier.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Associations' Opposition was served this 4th day of March, 2014 by electronic filing and e-mail to the persons listed below.

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