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

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

REPLY COMMENTS OF NTCA–THE RURAL BROADBAND ASSOCIATION

NTCA–The Rural Broadband Association ("NTCA"),[1] on behalf of its members herby replies to comments submitted in response to the above-reference Notice of Proposed Rulemaking ("NPRM").[2] Rural call failure is a problem that spans years. The Commission must abide by Congress' intent to ensure that both the covered providers and intermediate providers along each call path do their part to complete calls to rural Americans.

THE COMMISSION SHOULD BROADLY DEFINE "INTERMEDIATE PROVIDER"

The Commission should reject calls to exclude certain categories of intermediate providers from the definition of "Intermediate Provider" for purposes of registration and quality standards, and instead broadly define Intermediate Provider, consistent with Congress' intent.

[1] NTCA represents nearly 850 independent, community-based telecommunications companies and cooperatives and more than 400 other firms that support or are themselves engaged in the provision of communications services in the most rural portions of America. All of NTCA's service provider members are full service rural local exchange carriers and broadband providers.

[2] Rural Call Completion, Second Report and Order and Third Notice of Proposed Rulemaking, WC Docket No. 13-39, FCC 18-45 (Rel. April 17, 2018).

Section 262(a) of the RCC Act imposes registration and service quality requirements on any Intermediate Provider "that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission."[3] While Section 262(a) of the RCC Act provides the Commission with latitude in developing its definition of Intermediate Provider, as defined in the statute, the phrase "Intermediate Provider" is any entity that either "offers" or "holds itself out as offering" the mere "capability" to transmit covered voice communications. The statute further directs that such definition pertains to an entity that charges "any rate" to "any other entity (including an affiliated entity)" for the transmission. NTCA agrees with USTelecom – The Broadband Association ("USTelecom") and Verizon that defining Intermediate Provider as broadly as possible "will ensure that the full universe of providers that could potentially provision service to rural areas are identified per the requirements of the RCC Act."[4]

The Senate Report accompanying the RCC Act acknowledges only a single, narrowly defined limitation on how Congress defined "Intermediate Provider." Specifically, it notes that Congress' intent was not to define Intermediate Provider as to cover entities that only "incidentally transmit voice traffic," such as Internet Service Providers (ISPs) who may carry such traffic "without a specific business arrangement to carry, route, or transmit that voice traffic." Congress clearly set the definition and the limitations thereto, leaving little question as

[3] Improving Rural Call Quality and Reliability Act of 2017, Pub. L. 115-129 (2018) ("RCC Act").

[4] Comments of USTelecom – The Broadband Association ("USTelecom"), p. 5.

to the intended breadth or the limits of the Commission's authority to adopt its own further limitations.

Limiting the definition of Intermediate Provider further is not only inconsistent with Congress' intent, but with the public interest as well. Sprint and ITTA request that an intermediate provider not be considered an Intermediate Provider if it also originates or terminates covered traffic. The law already makes quite clear that a provider is not considered to operate as an Intermediate Provider when it originates or terminates *a given call*.[5] However, an originating or terminating provider that also serves as an intermediate provider may be subject to the same economic pressures and influences as any other intermediate provider *in performing that intermediate function*.[6] To exclude an intermediate provider from the definition of Intermediate Provider, and therefore exempt from registration and service quality rules, simply because of its otherwise unrelated status as an originating or terminating provider *in other calls and contexts* would eviscerate the RCC Act and any rules the Commission adopts – the exception would unmistakably swallow the rule (or in this case, the law) by allowing *any* intermediate provider to initiate a *de minmis* amount of origination or termination simply to avoid being classified as such. By contrast, a broad definition of Intermediate Providers will foreclose potential opportunities for misconduct by carriers and help to keep entities that are unqualified or have the intent to fail to perform in certain cases (or areas) from entering or remaining in the telecommunications marketplace. Congress intended to "increase the reliability

[5] RCC Act, (i)(3)(B).

[6] Both the Senate Report and the Notice acknowledge that the higher-than-average rates charged to transport and terminate long-distance calls to rural areas creates incentives for certain Intermediate Providers not to properly complete calls to rural areas, since they avoid paying higher-than-average transport and termination charges when it is not profitable to do so.

of intermediate providers by bringing transparency"[7] to the Intermediate Provider market and that intent should be reflected in the rules that apply to *all* intermediate providers.

The Commission should similarly reject Sprint's argument that requiring it to comply with the registration and service quality standards for its services as an Intermediate provider is "excessive and unnecessary."[8] Submission of registration information by Intermediate Providers will be minimally burdensome. Indeed, as USTelecom points out, "much of the registration information proposed by the Commission – such as phone numbers, business names and addresses – are of a highly routine nature that should be unproblematic for any legitimate company to provide."[9] The nominal proposed obligations for Intermediate Providers should not be onerous for carriers of any size.

COVERED CARRIERS SHOULD BE RESPONSIBLE FOR ENSURING THAT ALL INTERMEDIATE PROVIDERS IN THE CALL PATH ARE REGISTERED WITH THE COMMISSION

NTCA supports the Commission's reasonable interpretation of the term "use" in Section 262(b) to mean that a covered provider may not rely on any unregistered intermediate provider in the path of a given call. NTCA agrees that this is the most logical interpretation since Section 262(b) defines "intermediate provider" such that it refers to providers at all points in the call chain, expressly excluding only covered providers who originate or terminate a given call.

The Commission should reject the ITTA and Comcast interpretation such that "use" means only that the covered provider must ensure only that the first intermediate provider in the

[7] NPRM, ¶ 74 (citing Senate Commerce Committee Report, p. 2).

[8] Comments of Sprint Corporation, p. 2.

[9] Comments of USTelecom, p. 5

call path is registered. As HD Tandem points out, since covered providers are accountable for exercising oversight regarding the performance of all intermediate providers, they must be responsible for obtaining and retaining information about who they are and ensuring they are registered.[10]

ITTA argues that it may not be possible for a covered provider to identify or confirm the registration of every possible intermediate provider in a given call path.[11] ITTA's argument is fundamentally flawed and ignores the fact that covered providers have contractual relationships with the first Intermediate Provider in the call path who are capable of then contractually binding downstream providers to only use registered providers from an identified list.[12] Without a requirement that intermediate providers be contractually bound and identifiable, there is no way to know which downstream providers are not complying with the service quality standards and should lose their registration. To limit the prohibition such that only the *first* intermediate provider must be registered and known to the originating provider would enable unscrupulous carriers or intermediate providers to circumvent their ultimate responsibility to complete calls and is directly contrary to the Order's requirement that the Originating Provider is responsible for monitoring the *entire call chain*.[13] (Indeed, if this interpretation were to take hold, the

[10] *See*, Comments of HD Tandem.

[11] Comments of ITTA – The4 Voice of America's Broadband Providers ("ITTA"), p. 3.

[12] The ATIS RCC Handbook encourages use of such negotiated arrangements to promote effective management by upstream providers of the activities of their downstream intermediate providers. See, e.g., ATIS RCC Handbook, Clause 6.1, Contractual Arrangements; Clause 6.9, Inheritance of Restrictions. See also Second R&O at 10, ¶ 20 n.66 (acknowledging ATIS RCC Handbook best practices include "contractual agreements with intermediate providers to govern intermediate provider conduct.").

[13] NPRM, ¶ 34.

Commission's promise as to the effectiveness of the monitoring requirement will be all but gutted.) Permitting covered providers to "pass the buck" by not knowing the identities of all their intermediate providers amounts to allowing covered providers to circumvent their duties by employing unknown or anonymous intermediate providers in a call path. In a law clearly aimed at bringing greater transparency into this marketplace, Congress did not mean for covered providers to be able to dodge their responsibilities by knowingly turning a blind eye to those in the call path. Rural calls have failed for nearly a decade and public policy demands that covered providers assist, rather than resist or cleverly evade, efforts to finally resolve this issue.

THE COMMISSION SHOULD REJECT PLEAS TO PREMATURELY SUNSET DATA RECORDING AND RETENTION RULES

While NTCA remains hopeful that the rules adopted in response to this proceeding will effectively eliminate continuing rural call completion problems, the association urges the Commission to reject premature proposals to eliminate existing covered provider recordkeeping and retention rules in conjunction with the implementation of the RCC Act. ITTA argues that because Congress primarily addressed intermediate providers in the RCC Act, it did not view covered providers as a source of rural call completion problems.[14] However, it is precisely because the Commission exercised its obvious authority over covered providers to address rural call failure that there was no need for Congress to address them specifically in the RCC Act.

While providers identified difficulties with the reporting rules, they were effective in mitigating rural call completion problems, with "sunshine serving as the best disinfectant" when covered. Prior to the recordkeeping and retention requirements being adopted, one of the primary

[14] Comments of ITTA, p. 11.

barriers to effective enforcement of basic duties to complete calls was the lack of sufficient evidence to detect call completion failures. There is nothing in the current rules that holds carriers or intermediate providers to a specific rural call completion percentage threshold. Without record keeping, there is no way to measure or enforce the language of the RCC Act that is intended to "prevent unjust or unreasonable discrimination among areas of the United States. . ."

Further, the use of multiple intermediate providers in a call path is known as a primary reason for call failure. Covered providers were incented to limit the number of intermediate providers in the call path with the "Safe Harbor." Carriers who abide by the Safe Harbor are subject to reduced record keeping and recording requirements. Several larger originating providers elected to take advantage of the Safe Harbor and have a demonstrably better record of completing rural calls than those carriers who do not fall under the Safe Harbor.

While the Safe Harbor would continue under the rules adopted as part of this proceeding by allowing covered providers to avoid requirements associated with the intermediate provider quality standards, only those providers who are themselves intermediate providers have any incentive to comply. Prematurely eliminating the record keeping and retention requirements may lead to an increase in the number of intermediate providers being used in the call path for providers who now have a good record of completing calls. Until it is known that the registration of intermediate providers in conjunction with the quality standard requirements adopted by the Commission eliminates the problem of rural call failure, the Safe Harbor, in its current form, is a necessary part of rural call completion mitigation efforts.

At the very least, as NTCA has consistently asserted, the Commission should determine first if elimination of the reporting requirements has had any impact upon call completion, and also provide time for implementation and evaluation of the intermediate provider rules to be adopted in this proceeding before reaching any conclusions with respect to whether the recordkeeping and retention requirements should likewise be torn down.

THE COMMISSION SHOULD NOT POSTPONE THE START DATE FOR COVERED PROVIDER MONITORING

The Commission should reject proposals that request that enforcement of the monitoring requirements for Covered Providers be delayed.[15] USTelecom argues that it is not possible for Covered Providers to renegotiate contracts until it knows the obligations of intermediate providers at the conclusion of this proceeding. However, USTelecom's reasoning for delay is based on a flawed reading of the RCC Order.

In the Order, after giving them a pass from reporting requirements going forward, the Commission also gives covered providers maximum flexibility to determine how they will fulfill their replacement monitoring responsibility. The Commission permits each covered provider to determine the standards and methods best suited to its individual networks. The Commission informs covered providers that they must prospectively monitor rural call completion and manage the call path, but offers that covered providers may accomplish that managing through: (i) direct monitoring of all intermediate providers, or (ii) a combination of direct monitoring of contracted intermediate providers and contractual restrictions on directly monitored intermediate

[15] Comments of USTelecom. USTelecom has also petitioned the Commission to stay the monitoring requirements pending consideration of rules governing performance by Intermediate Providers through the rulemaking that accompanied the Order. Petition for Stay of USTelecom, WC Docket No. 13-39 (posted June 12, 2018).

providers that are reasonably calculated to ensure rural call completion through the responsible use of any further intermediate providers. The Commission goes further and states, "contractual measures that meet this standard include limiting the use of further intermediate providers and provisions that ensure quality call completion."[16]

USTelecom apparently erroneously reads the reference to "quality call completion" as a requirement that covered providers include the quality standards adopted at the conclusion of the instant proceeding in their contracts with intermediate providers. A careful reading of the Order reveals that the Intermediate Provider quality standards operate independently of the covered provider monitoring requirement.

The Commission, in footnote 115, offers contractual provisions that may be incorporated to satisfy the covered providers' monitoring requirement. The suggested contractual provisions bear no relation to whatever quality standards the Commission ultimately adopts for Intermediate Providers, focusing instead on the required sharing of information between the Intermediate Provider and covered provider, system design and procedures designed to mitigate call failure. Overlap with service quality standards, to the extent they may eventually exist at all, are minimal. If a covered provider chooses to comply with the monitoring provision through contractual relationships, it may begin the process of ensuring that Intermediate Providers cooperate in the monitoring of networks. There is no reason contracts will change again when the Commission determines the extent of Intermediate Provider obligations.

[16] Order, ¶ 34.

CONCLUSION

NTCA believes that implementing sufficient accountability, transparency, and enforcement across all providers in the call path will mitigate most of the call completion and quality issues that have plagued the industry for nearly a decade.

Respectfully submitted,

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