

It its Report, the Bureau found that the aggregate call answer rate in rural areas was “slightly lower” than in non-rural areas and that the difference in covered providers’ median call answer rates in rural and nonrural areas was approximately two percent. Based on that data, the Bureau concluded not that the rules are operating as intended, but instead that the requirement to report data has not caused providers to improve their performance in rural areas “during the reporting period.” The Bureau therefore recommends that the Commission seek comment on eliminating the recording, retention and reporting rules. However, the Bureau’s recommendation does not logically flow from the data or the industry history.

II. THE COMMISSION ADMONISHED CARRIERS FOR RURAL CALL FAILURE FOR SEVERAL YEARS TO NO EFFECT

The Commission has a long history of reminding carriers of their obligation to complete calls, stating that carriers are prohibited from blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges.³ The Wireline Competition Bureau issued a declaratory ruling back in 2007 to clarify that no carriers, including interexchange carriers, may block, choke or restrict traffic in any way, noting that the ubiquity and reliability of the nation’s telecommunications network is of paramount importance.⁴ Despite the admonishments, rural providers received complaints from subscribers who were not receiving calls. The problem grew exponentially and it was found that there was a systemic issue of calls failing to reach rural networks. NTCA first officially notified the Commission of widespread reports of call failure in early 2011. In September of that year, the Commission created the Rural Call Completion Task

³ See, *Access Charge Reform*, CC Docket No. 96-262, RCC 01-146, Seventeenth Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9932-33 (2001); *Blocking Interstate Traffic in Iowa*, FCC 87-51, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987).

⁴ *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, 22 RCC Rcd 11629 (WCB 2007).

Force and in October 2011, the Commission hosted a workshop on rural call routing and termination problems at which trade associations, industry representatives and state utility commissions described the issues and discussed potential solutions.⁵ In its November 2011 Order reforming intercarrier compensation and the Universal Service Fund, the Commission again emphasized its longstanding prohibition on call blocking, reiterating that call blocking has the potential to degrade the reliability of the nation's telecommunications network and that call blocking harms consumers.⁶

The Commission's reminders had little impact. In March of 2011, NTCA found that 80 percent of its members reported call completion problems⁷ and it was reported that customer reports of problems receiving calls increased by more than 2000 percent in the twelve-month period from April 2010 to March 2011.⁸ Any confusion should have been rectified in February 2012 when the Wireline Competition Bureau issued a declaratory ruling to clarify the scope of the Commission's prohibition on blocking, choking, reducing or restricting telephone traffic, making it clear that rural call routing practices that lead to call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201 of the

⁵ See *FCC Announces Agenda for October 18 Rural Call Completion Workshop*, Public Notice, 26 FCC Rcd 14351 (2011).

⁶ *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-up, Universal Service Reform – Mobility Fund*, WC Docket Nos. 10-90, *et.al* .Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17903 (2011).

⁷ See Letter from Michael Romano, Counsel for the National Telecommunications Cooperative Association (now, NTCA – The Rural Broadband Association) to Marlene H. Dortch, Secretary, FCC WC Docket Nos. 07-135. 11-39 CC Docket No. 01-92 (filed March 11, 2011).

⁸ See Letter from National Exchange Carrier Association (NECA), NTCA, Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) and Western Telecommunications Alliance (WTA), to Theresa Z. Cavanaugh and Margaret Dailey, Investigations and Hearings Division, Enforcement Bureau, FCC (filed June 13, 2011).

Communications Act of 1934, as amended, or may violate the carriers' section 202 duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services.⁹ In May 2012, a call-completion study based on more than 7400 call attempts found that the call incompleteness rate in rural areas remained 13 times higher than in nonrural areas.¹⁰ A third survey in November 2012 found that problems with completing calls to rural areas continued at an alarming rate¹¹ and during the period September through November 2012, the Commission received informal complaints from rural residents, businesses and carriers concerning more than 500 rural call completion problems.¹² And in August 2012, ATIS released an Intercarrier Call Completion/Call Termination Handbook which offered voluntary "best practices" for ensuring call completion.¹³ Despite the Commission's frequent reminders about carrier obligations and industry-developed best practices that, if followed, would certainly address the issue, there continued a systemic problem of calls failing to reach rural consumers.

In February 2013, after finding "evidence indicat[ing] that the retail long-distance providers may not be adequately examining the resultant rural call completion performance,"¹⁴ the Commission sought comment on the first proposals specifically designed to combat the problem of rural call incompleteness. On November 8, 2013, the Commission released the Rural Call Completion Order, which adopted rules requiring covered providers to record, retain, and

⁹ *Developing a Unified Intercarrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers*, CC Docket No. 01-92, WC Docket No. 07-135, Declaratory Ruling, 27 FCC Rcd 1351(2012).

¹⁰ See Letter from NECA, NTCA, OPASTCO, and WTA to Marlene H. Dortch, Secretary, FCC WC Docket Nos 07-135, 11-39, CC Docket No. 01-92 (filed May 21, 2012).

¹¹ See Letter from Colin Sandy, Government Relations Counsel, NECA, to Marlene H. Dortch, Secretary, FCC WC Docket Nos. 07-135, 11-39, CC Docket No. 01-92 (filed Nov 15, 2012).

¹² NPRM, n. 34.

¹³ ATIS Standard on Intercarrier Call Completion. Call Termination Handbook, ATIS-0200106 (2012).

¹⁴ NPRM ¶1.

report to the Commission call answer rates for long-distance calls.¹⁵ Although the rules did not go into effect until more than TWO YEARS later, the Commission made it clear that a long-distance provider's failure "to investigate evidence of a rural call delivery problem or to correct a problem of degraded service about which [a carrier] knows or should know . . . may lead to enforcement action."¹⁶

Despite this history and Commission attention, calls to rural areas failed to complete. In January 2015, the Commission's Enforcement Bureau entered into a consent decree with Verizon to resolve its investigation into the company's failure to investigate evidence it collected over the eight-month period between April and December 2013 that reflected problems with its delivery of calls to rural areas of the country.¹⁷

The recording, retention and reporting rules adopted in February 2013 took effect on March 4, 2015 and for the first time the Commission had visibility into the call routing and completion practices of long-distance providers. Contemporaneously, call completion complaints abated. But even today, more than six years after the Commission was made aware of rural call incompleteness, problems persist. Twenty nine percent of NTCA's members who responded to a survey earlier this year reported experiencing rural call completion problems within the most recent month, with more than 10% reporting that problems recur on a weekly basis.¹⁸

¹⁵ Rural Call Completion, Report and Order and Further Notice of Proposed Rulemaking 28 FCC Rcd at 16154, 16211-14, Appendix A (2013) ("Rural Call Completion Order").

¹⁶ Rural Call Completion, Order on Reconsideration, WC Docket No. 13-39 (Rel. Nov. 13, 2014).

¹⁷ Verizon, Consent Decree and Adopting Order, File NO.: EB-IHD-14-00014821, Acct. No.: 201532080007, FRN: 0004335592 (Rel. January 26, 2015). Rural call completion Consent Decrees were also entered into with Level 3 Communications, LLC and Windstream Corporation.

¹⁸ The Commission also found that during the reporting period the call answer rate in rural areas was lower than in nonrural areas and there was a difference in covered providers' median call answer rates in rural and nonrural areas. Report, p. 2.

III. THE DATA RECORDING, RETENTION AND REPORTING RULES HAVE BEEN RELATIVELY EFFECTIVE

Nothing the Commission or rural carriers did up to the point of the Rural Call Completion Order becoming effective helped to ensure that calls to rural customers and businesses complete. It was the act of complying with the rules (or a Consent Decree) and the visibility it provided, combined with the threat of enforcement action, that forced originating providers to improve their procedures and adjust their network performance procedures to ensure that rural calls complete.

The record keeping and reporting requirements were adopted “to address significant concerns about completion of long-distance calls to rural areas” and to “ensure that long-distance calls to all Americans, including rural Americans, are completed.”¹⁹ The Bureau was directed to issue a report on the “effectiveness” of the rules. Effectiveness would be achieved if, on aggregate, calls to rural Americans completed at an improved rate. They did and the rules accomplished the goal.

The Commission notes that the “call answer rate in rural areas did not increase over the course of the reporting period.” The sole basis of this conclusion was the collected Form 480 data that the Commission repeatedly stated contained several data quality issues.²⁰ Even if the data were completely reliable, two years lapsed between when the Rural Call Completion Order was adopted and when the rules became effective. These two years provided ample time for individual carriers to prepare. Providers improved their performance before the rules became effective; the “ramp up” period occurred before the rules became effective, not after. Those providers were then incented to maintain these improvements knowing that the Commission would be closely monitoring their performance results. It is unsurprising that the measures

¹⁹ Rural Call Completion Order, ¶1.

²⁰ Report, ¶ 23.

remained stable and it is a positive finding, reinforcing the effectiveness of the Commission’s rules. The fact that complaints decreased when the rules were implemented and that the measures have remained relatively stagnant during the reporting period shows that the rules are working *exactly* as intended. To conclude that “the requirement to report data, in and of itself, has not caused providers. . . to improve their performance in rural areas during the reporting period”²¹ is nonsensical. There is only one explanation for providers finally improving their performance – the existence of the record keeping and reporting requirements and its associated “safe harbor.”

IV. THE BUREAU SHOULD USE ITS DATA TO EXAMINE INDIVIDUAL CARRIER PERFORMANCE

The Commission adopted its Rural Call Completion data collection and reporting requirements not only to “address significant concerns about the completion of long-distance calls to rural areas.”²² The Commission adopted the specific reporting requirements because before the requirement, the long-distance providers “[did] not collect and retain information on failed call attempts that is necessary . . . to analyze rural call performance relative to overall performance or to distinguish the performance of intermediate providers in delivering calls to rural areas” and because the lack of data “impeded Enforcement Bureau investigations.”²³ The Commission rules forced providers to gather the data necessary to monitor their networks or abide by a safe harbor and to enable the Commission to determine which individual carriers were failing to complete calls.

The Bureau focuses much of its attention on its aggregate findings. It states that “rural call completion may be more a function of individual provider performance than a systemic

²¹ Report, ¶ 3.

²² Report, ¶ 1

²³ Rural Call Completion, Notice of Proposed Rulemaking, WC Docket No, 123-39, pp. 6-7 (Rel. Feb. 7, 2013) (“NPRM”).

problem,”²⁴ that the act of reporting has not caused providers “in the aggregate” to improve their performance,²⁵ and that “the data provides a less than clear understanding of the overall state of rural call completion performance.”²⁶ However, the data retention and reporting requirements were intended to provide visibility into *individual* carrier performance. The Bureau noted that “there was wide variation in performance among covered providers.” Given the intent of the data collection, *i.e.*, to insure long distance providers are analyzing rural call performance and the performance of intermediate providers and to provide the data necessary to enable the Enforcement Bureau to complete investigations, individual provider performance is exactly the sort of data one would expect to be the focus of the report. For example, is there a correlation between the number of complaints against a provider and its call answer rate? That sort of information might help distinguish useful measures from unnecessary ones.

Aggregate data is likely skewed, given that the nation’s largest providers, with a combined nearly 70% of the long-distance market share and 70% of the wireless market share, are limiting and monitoring their use of intermediate providers. It is understood that much of the problem of calls failing to reach rural customers is due to the use of intermediate providers in the call path. The use of multiple intermediate providers in the call path has proven cost-effective for originating providers, but immeasurably costly to rural consumers and businesses. AT&T and CenturyLink have certified their compliance with the “Safe Harbor” which permits them to avoid the bulk of the record keeping and reporting requirements if they restrict by contract any intermediate provider to which a call is directed from permitting more than one additional intermediate provider in the call path before the call reaches their terminating provider or

²⁴ Report, ¶1.

²⁵ Id.

²⁶ Id.

terminating tandem and monitor intermediate performance.²⁷ Verizon is similarly bound by the terms of its consent decree.²⁸

Limiting the number of intermediate providers and monitoring their effectiveness ensures that the bulk of rural calls complete. But it comes at a cost. The carriers who opt for the safe harbor reported, “minimiz[ing] the number of carriers involved in routing a call from origination to completion. . .is neither easy nor inexpensive.”²⁹ Absent a regulatory requirement to report or comply with the safe harbor, there is no reason to believe that the nation’s largest providers will continue to abide by its requirements. The safe harbor requirements go by way of the record keeping and reporting requirements.

V. THE COMMISSION SHOULD MODIFY NOT ELIMINATE THE DATE RECORDING, RETENTION AND REPORTING RULES

The Bureau recommended elimination of the recording, retention and reporting rules. However, there is no question that the number of rural call completion complaints dropped when the requirements were implemented. The rules shined a necessary spotlight on individual providers such that they were forced to change their practices. As a general rule, NTCA does not advocate for unnecessary regulation or record keeping that is overly burdensome or serves no useful purpose, but the requirements at issue work. Indeed, the adage “sunlight is the best disinfectant” seems wholly appropriate in this instance.

Rural call completion problems are inconvenient, at best and dangerous, at worst. The public interest demands that the Commission take no action that will exacerbate the situation. History has shown that carriers are unlikely to police themselves on this issue and removing or

²⁷ See, Rural Call Completion Safe Harbor Certification of AT&T, WC Docket No. 13-39 (filed July 24, 2017), Rural Call Completion Safe Harbor Certification of CenturyLink, WC Docket No. 13-39 (filed July 24, 2017).

²⁸ Verizon Consent Decree, p. 9.

²⁹ Safe Harbor Certification of CenturyLink.

waiving the rules³⁰ absent a suitable and effective replacement, is likely to lead to backsliding. Rather than eliminating the rules in their entirety, the Commission should modify certain record keeping and reporting requirements so that measures that correlate with complaints are retained. Retaining a streamlined record keeping reporting requirement and combining it with requirements that have been shown to ensure network performance would preserve incentives that exist because of the “sunshine” of the current reporting requirements.³¹ Doing so would also improve the information of the reports and reduce the burden of submitting them, while ensuring that calls complete to rural consumers and businesses.

VI. CONCLUSION

Based on the foregoing, NTCA disagrees with the Bureau’s data analysis and recommends that the commission cure the defects in the data collection, rather than eliminate the data recording, retention and reporting rules.

Respectfully submitted,



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³⁰ NTCA expressly opposes the CTIA Waiver Request filed with the Commission July 6, 2017.

³¹ NTCA will offer more specific proposals later this month in response to Rural Call Completion, Second Further Notice of Proposed Rulemaking, WC Docket No. 13-39 (Rel. July 14, 2017).