

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

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

**PETITION FOR RECONSIDERATION
OF
NTCA–THE RURAL BROADBAND ASSOCIATION**

I. INTRODUCTION & SUMMARY

NTCA–The Rural Broadband Association (“NTCA”),¹ on behalf of its members and pursuant to Section 405 of the Communications Act of 1934, as amended (the “Act”)² and Section 1.429 of the Commission’s Rules³ hereby respectfully requests that the Federal Communications Commission (“Commission”) reconsider a portion of its 2018 Rural Call Completion Second Report and Order (“2018 RCC Order”).⁴ Specifically, NTCA requests that the Commission reevaluate and reconsider its decision to not require covered providers to file their documented rural call completion monitoring procedures with the Commission.⁵

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 47 U.S.C. § 405.

³ 47 C.F.R. § 1.429.

⁴ *Rural Call Completion, Second Report and Order*, WC Docket No. 13-39, FCC 18-45 (Rel. April 17, 2018) (“2018 RCC Order”).

⁵ Id. at ¶ 46.

II. STATEMENT OF INTEREST

47 C.F.R. § 1.429 permits “any interested person” to petition for the reconsideration of a final action. An affirmative decision to decline to adopt a rule constitutes a final action in an FCC rulemaking proceeding. NTCA is an interested party. It participated in the proceeding, submitting pleadings and participating in numerous *ex parte* meetings. Moreover, NTCA represents hundreds of rural incumbent local exchange carriers and their competitive affiliates, many of which have suffered through rural call completion failures for nearly a decade.

III. RELEVANT FACTS

Despite the Commission’s efforts in recent years to ensure that calls are appropriately routed and delivered,⁶ rural call completion issues persist.⁷ As the Commission noted, the incentives to minimize routing costs can lead, and have led, to poor call completion performance.⁸ In the 2018 RCC Order, the FCC requires covered providers to monitor the intermediate provider’s performance and take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider. The monitoring requirement entails both prospective evaluation to prevent problems and retrospective investigation of problems that arise.⁹ The Commission stated, “[t]o ensure consistent prospective monitoring and facilitate Commission oversight, we *expect* covered providers to document their processes for prospective monitoring and identify staff responsible for such monitoring functions in the written

⁶ See, 2018 RCC Order ¶¶ 5-9.

⁷ *Id.* ¶ 14.

⁸ *Id.*

⁹ 2018 RCC Order, ¶15.

documentation, and we *expect* covered providers to comply with that written documentation in conducting the required prospective monitoring.”¹⁰ However, the Commission failed to adopt a rule that *requires* covered providers to document their prospective monitoring processes and, citing vague concern about the revelation of details about the providers’ network and business operations, also declined to require covered providers to file their documented monitoring procedures with the Commission.¹¹

IV. DISCUSSION

Rural call failure is a persistent problem; even as failures in discrete areas may ebb and flow, the recurrence of such concerns generally remains a problem that has been resistant to effective solutions. As the Commission has noted, there are incentives to use poor quality routes, and some originating providers have a demonstrated history (once detected) of failing to take the steps necessary to ensure that calls complete to rural areas.¹² Mere reaffirmations and reminders to originating providers of the Commission’s expectations that carriers will complete calls has historically failed to provide the necessary incentives for carriers to do so in all cases.

In 2011,¹³ the Commission reaffirmed the Commission’s call blocking policy, made clear that carriers’ blocking of VoIP-PSTN traffic is prohibited, and clarified that interconnected and

¹⁰ 2018 RCC Order, ¶ 17 (emphasis added).

¹¹ 2018 RCC Order at ¶ 46.

¹² See *inContact, Inc.*, Order and Consent Decree, 31 FCC Rcd 4329(2016), *Verizon*, Order and Consent Decree, 30 FCC Rcd 245 (EB 2015); *Level 3 Commc’ns., LLC*, Order and Consent Decree, 28 FCC Rcd 2274 (EB 2013); *TMobile*, Order, File No.: EB-IHD-16-00023247, Acct. No.: 201832080003, FRN: 0004121760 (rel. April 16, 2018).

¹³ *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 a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket NTCA–The Rural Broadband Association WC 13-39, FCC 18-45 June 11, 2018

one-way VoIP providers are prohibited from blocking voice traffic to or from the PSTN. Moreover, in 2007 and again in 2012, the Wireline Competition Bureau clarified that carriers are prohibited from blocking, choking, reducing or restricting calls, including performing such actions to avoid termination charges.¹⁴ These reminders and the declaratory ruling did little, however, to stem the tide of rural call failures.

Seeing no meaningful improvement in call completion practices based upon the “reaffirmation and reminder” approach, the FCC in 2013 ultimately prohibited false ring signaling, and also established recordkeeping, data retention, and reporting rules.¹⁵ These rules forced carriers to comply with procedures that provided better incentives to ensure that calls complete, and provided the Commission with visibility into carrier practices that had long been difficult to detect and had frustrated efforts at enforcement. Only when the order became effective – years after the Commission first reaffirmed the Commission’s call blocking policy – did rural call completion finally begin to improve.

Subsequently, the effectiveness of the call reporting procedures came into question. In June 2017, for example, the Wireline Competition Bureau issued a report indicating that there was no improvement in covered providers’ call answer rates to rural OCNs in the aggregate

No 10-90, *et. al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *aff’d sub nom In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

¹⁴ See, *Developing a Unified Inter-carrier 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, para 1 (WCB 2012); *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, Declaratory Ruling and Order 22 FCC Rcd 11629 (WCB 2007).

¹⁵ *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 13-39, 28 FCC Rcd 16154 (2013).

during the reporting period. However, the RCC Report was flawed in its data analysis, comparing periods only after the rules took effect. To gauge the rules' true effectiveness, the relevant data would include a comparison of data pre-dating adoption of the rules in 2013 with data from the period after 2015. Furthermore, while the Commission has not made available information about the number of RCC complaints received before 2014, the complaints about rural call completion filed by rural carriers with the Enforcement Bureau decreased by about 45 percent from 2015 to 2016 and another 15 percent from 2016 to 2017.¹⁶

Nonetheless, even if the *incentives* provided by the requirement to report on call completion clearly helped to improve performance, NTCA was aware of concerns that the reports were not themselves yielding actionable data to aid in enforcement.¹⁷ NTCA therefore did not object to elimination of the reporting requirements in then-current form as long as they were replaced with something that would continue to provide proper and sufficient incentives to complete calls. Thus, NTCA did not object when, in the 2018 RCC Order, the Commission eliminated the reporting requirement for covered providers. Instead, “[t]o better reflect strategies that have worked to reduce rural call completion problems,”¹⁸ the Commission adopted a new rule requiring covered providers to monitor the performance of the intermediate providers to which they hand off calls. The Commission determined, “by holding a central party responsible for call completion issues, it will be less likely for calls to ‘fall through the cracks’ along a

¹⁶ Commission staff estimates that consumer complaints decreased by about 8% from 2014 to 2017.

¹⁷ See 2018 RCC Order, ¶ 13.

¹⁸ 2018 RCC Order, ¶ 12.

lengthy chain of intermediate providers.”¹⁹ The Commission expressed its belief that the monitoring requirement would encourage providers to ensure that calls are completed, provide certainty to covered providers regarding the actions they must take, and enhance the Commission’s ability to take enforcement action.²⁰

Most importantly, however, the Commission adopted measures to help maintain incentives to complete calls beyond mere reminders and reaffirmations to monitor. Specifically, even as it eliminated the reporting requirements, the Commission indicated its expectation that providers would document their procedures for monitoring and evaluation of intermediate providers. The Commission offered covered providers “maximum” flexibility on how to comply with the monitoring requirement, but also encouraged adherence to the ATIS RCC Handbook best practices, indicating in footnote 65 that a covered provider that adheres to all of the ATIS RCC Handbook best practices will be deemed to be compliant with the monitoring rule.²¹

But, even as the Commission proclaimed its expectation that covered providers would document their monitoring procedures, it declined to require covered providers to file those documented procedures with the Commission or otherwise make them publicly available. It is this conclusion that NTCA challenges through the instant Petition. To be clear, NTCA is challenging neither the Commission’s monitoring requirement nor its decision to provide covered providers with flexibility in compliance. Rather, NTCA requests only that the

¹⁹ *Id.*

²⁰ 2018 RCC Order, ¶¶ 12,16 .

²¹ *See*, 2018 RCC Order, ¶ 20 and fn 65.

Commission reconsider its decision not to require the filing of documentation that covered providers prepare to indicate how they plan to monitor intermediate providers.

Rural call completion is a problem that spans years with known, not theoretical, consequences. Without the reporting requirements, it is unclear what incentives covered providers will have to complete calls, particularly given that they were subject to what was effectively a comparable monitoring duty prior to 2013 even as call completion problems were at their relative peak. The documented procedures would at least represent an incremental improvement over the status quo *ex ante*, giving covered providers some cause to live up to those procedures – but only if the Commission knows what the intended procedures are. The 2018 RCC Order, however, removes the Commission’s visibility into performance and creates no visibility into compliance with the monitoring requirement. With this decision, the Commission is tying its own hands regarding rural call completion policy, oversight, and enforcement. In the absence of a simple filing requirement, there exists no way for any party, including the Commission, to know what any covered provider’s monitoring procedures are, whether they have been followed, or whether they are effective. Without any such transparency, this Order returns the industry to a time when call completion performance and practices rely entirely upon promises to do well and keep an eye on others to do the same.

No legitimate cost-benefit analysis supports the conclusion that the procedures should not be filed. The monitoring procedures, adopted in response to the successful appeal of covered providers, impose a minimal burden and provide maxim flexibility. Covered providers are expected to do no more than write down how they will aim to complete calls through

management of intermediate providers. The only bona fide additional burden of filing the procedures would be to upload them via a FCC web portal.

In explaining its decision to permit providers to merely place their documented monitoring procedures on some theoretical shelf, the Commission indicated that such documentation is likely to reveal “important technical, personnel and commercial details about the covered provider’s network and business operations”²² and would therefore impose “meaningful” burdens.²³ Notably, there is no indication that such a filing would divulge any confidential or sensitive business information. In fact, if a provider believes that its rural call completion monitoring procedures include confidential or sensitive business information – although it is difficult to imagine such a case, given that the Commission provides specific guidance on what it would consider acceptable monitoring – the covered provider could request confidential treatment of its filing, or a portion thereof.²⁴ Indeed, the Commission’s files are replete with confidential and proprietary information submitted by parties in various other matters;²⁵ it is therefore impossible to square how being required to file something the Commission expects providers to prepare anyway could possibly or plausibly represent a burden

²² 2018 RCC Order ¶ 46.

²³ *Id.*

²⁴ Exemption 4 of the Freedom of Information Act permits the FCC to withhold “trade secrets and commercial or financial information obtained from a person and privileged and confidential.” Compulsory submissions are deemed to be confidential when disclosure would be likely to cause substantial harm to the competitive position of the submitter. 5 U.S.C. § 552. *See also*, 47 C.F.R. §§ 0.457(d) and 0.459.

²⁵ *See e.g.*, Special Access for Price Cap Local Exchange Carriers; AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services, WC Docket No. 05-25, RM-10593, Order and Data Collection Protective Order, 29 FCC Rcd 11657 (Wireline Comp. Bur. 2014).

of any kind whatsoever when procedures to protect such information (if it actually is confidential or proprietary) are readily available and regularly utilized otherwise. If filed, even if not publicly available, the Commission would at least have access to the information necessary to determine whether a company has sufficient monitoring policies in place and whether the company follows them.

It is doubtful that a mere expectation that covered providers will write down rural call completion monitoring procedures – without any visibility into whether they exist, what they are, and whether they are followed – will lead to meaningful monitoring action on the part of some originating providers. The long history of efforts to address call completion gives more than sufficient basis to call into question the utility and efficacy of “expectations”-based oversight in this space; at the very least, if reports will no longer be required to give covered providers incentive to be on their “best behavior,” requiring covered providers to document upfront how they will use the flexibility afforded by the Commission’s revised rules to ensure sufficient call completion and to then submit that written explanation to the Commission hardly represents a “burden” of any meaningful or identifiable kind.

III. CONCLUSION

NTCA respectfully requests that the Commission reconsider its RCC Order such that covered providers be required to file with the Commission and make publicly available their documented rural call completion monitoring procedures.

Respectfully submitted,



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