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

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

**COMMENTS
of the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.;
NTCA – THE RURAL BROADBAND ASSOCIATION;
EASTERN RURAL TELECOM ASSOCIATION; and
WTA – ADVOCATES FOR RURAL BROADBAND**

I. INTRODUCTION AND SUMMARY

The Commission’s *Rural Call Completion Order*¹ requires originating long-distance service providers² to record, retain and report certain call completion data. Among other things, the *Order* included a “Managing Intermediate Provider” safe harbor that allows qualifying providers to reduce their reporting obligations, and reduce their data retention obligations, if they certify: (a) they use no more than two intermediate providers in the call path; (b) any nondisclosure agreements they may have with intermediate providers permit the covered provider to reveal the identity of the directly-connected intermediate provider and any additional intermediate providers; and (c) they have processes in place to monitor the performance of

¹ *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd. 16154 (2013) (*Order* or *FNPRM*).

² The Order defines covered entities as providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, regardless of whether those providers are facilities-based, (*Order* ¶ 20) and include local exchange carriers (LECs), interexchange carriers (IXCs), Commercial Mobile Radio Service (CMRS) providers, and Voice over Internet Protocol (VoIP) service providers. *Id.* ¶ 21.

intermediate providers.³ The Order also included a rule prohibiting the sending of false audible ring-back to the originating caller.⁴

The accompanying *Further Notice of Proposed Rulemaking* (FNPRM) seeks comment on: the ability of covered providers to identify and segregate autodialer calls; whether the rules adopted in the *Order* should be extended to intermediate as well as originating providers; whether the safe harbor provision adopted in the *Order* should be modified in the future and whether a separate safe harbor related to a provider's record of matching or exceeding a rural ILEC's reported terminating call answer rate in specific OCNs should be adopted; whether incoming call completion reporting requirements should be imposed on rural ILECs; and whether the Commission should codify existing general prohibitions on blocking, choking, reducing or restricting traffic.⁵

In these comments, the Rural Associations⁶ express their continued support for the Commission as it seeks to address rural call completion problems. Not only are the Rural Associations supportive, but their members – and more importantly, the consumers those

³ *Id.* ¶ 86.

⁴ *Id.* ¶¶ 111-119.

⁵ *FNPRM* ¶¶ 120-130.

⁶ NECA is responsible for preparation of interstate access tariffs and administration of related revenue pools, and collection of certain high-cost loop data. *See generally*, 47 C.F.R. §§ 69.600 *et seq.*; *MTS and WATS Market Structure*, CC Docket No.78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983). NTCA-The Rural Broadband Association represents nearly 900 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service local exchange carriers (LECs) and broadband providers, and many of its members provide wireless, cable, satellite, and long distance and other competitive services to their communities. ERTA is a trade association representing rural community based telecommunications service companies operating in states east of the Mississippi River. WTA-Advocates for Rural Broadband is a national trade association that represents more than 250 rural telecommunications carriers providing voice, video and data services. WTA members serve some of the most rural and hard-to-serve communities in the country and are providers of last resort to those communities.

members serve – remain desperate to see these problems resolved through strong enforcement of rules adopted in the *Rural Call Completion Order* and whatever additional actions are needed. The Commission should leave no stone unturned in seeking ways to end rural call completion problems.

Although the Rural Associations remain hopeful the actions taken in the *Order* will have a substantial positive impact on rural call completion statistics, it is simply too early to tell. There is, to the contrary, evidence that the problems persist as the *Order* awaits implementation.⁷ Thus, in considering additional steps in the context of the instant FNPRM, the Commission should first move to implement its *Order* as quickly as possible and avoid taking any actions that might jeopardize successful implementation of current data collection and reporting requirements.

With respect to specific topics mentioned in the FNPRM, the Rural Associations suggest the Commission refrain from requiring covered providers to separately identify autodialer traffic, as it appears such reports would likely incorporate inconsistent data and thus be of limited or no use. The Rural Associations also support imposition of reasonable registration and certification requirements on intermediate providers, and explain below that the Commission has authority to impose such requirements under the Act.

The Commission should not reduce or weaken any of the data retention and reporting requirements imposed by the *Order*, and in particular should not consider modifying the existing safe harbor or adding new safe harbor provisions to the rules until at least a year's worth of call completion data has been gathered and analyzed. The Commission should also refrain from

⁷ See, e.g., Shelby Capacio, *Dropped Calls? Minn. Commerce Commissioner Urges Probe*, myFOX9.com, Jan. 15, 2014, <http://www.myfoxtwincities.com/story/24451827/dropped-calls-minn-commerce-commissioner-urges-probe>

requiring rural ILECs to report incoming call answer rate (CAR) data, given that companies do not typically have the information needed to compute CARs. Finally, rather than seek to codify existing prohibitions against call blocking, choking and other unreasonable call completion practices, the Rural Associations recommend the Commission focus its full attention on targeted enforcement actions against providers who unreasonably interfere with the ability of rural consumers to make and receive calls.

II. DISCUSSION

A. The Commission Should Not Require Separate Reporting of Autodialer Traffic.

Commenters in this proceeding have previously argued that autodialer traffic may skew call completion performance results, and suggested that separate reports on such traffic may improve overall accuracy of call completion reports.⁸ The FNPRM accordingly questions whether covered providers should be required to file separate reports for such traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic.⁹

As a general matter, separate reporting requirements for particular types of traffic should be required only if all providers have the ability to consistently identify and segregate particular call categories. Otherwise, inconsistent data reporting will hinder the Commission's ability to monitor comparative performance levels across providers.¹⁰ In this instance, it appears many

⁸ *E.g.*, Level 3 at 2, 9-10; Comcast at 8; Verizon at 4; Windstream at 3-4 (filed May 13, 2013).

⁹ *FNPRM* ¶ 121.

¹⁰ *See* NTCA, NECA, WTA, ERTA at 18 (filed June 11, 2013).

providers do not currently have the ability to identify and separately report autodialer traffic,¹¹ and therefore such a requirement is not likely to be useful for purposes of analyzing reported call answer rates.

In any event, it is not at all clear that separate reporting of autodialer traffic would be useful even if accurate and consistent data were available. For example, while many callers use autodialers for unwanted “junk” calls that go deliberately unanswered, in other cases autodialer calls are perceived as useful or even vital by end users (*e.g.*, “reverse 911” calls to alert local residents of a natural disaster or school closings). Without a clear and consistent policy justification for obtaining separate reports on autodialed calls, the Commission should not require providers to develop special methods for such traffic.

B. Reasonable Registration and Basic Certification Requirements Should be Extended to Intermediate Providers.

The Commission seeks comment on whether it should extend its call completion rules to intermediate providers, or a subset thereof, and whether the Commission has the authority to do so. In this regard, the Rural Associations reiterate their request for the establishment of a complete, updated and reliable provider contact list.¹² Some originating carriers have been willing and able to help address individual call routing problems, but rural carriers are often frustrated in their efforts to contact the individual or individuals with the technical expertise and authority to address issues or correct problems. While some carrier contact lists are currently

¹¹ *See, e.g.*, CenturyLink at 15 (filed May 13, 2013); XO at 11-12 (filed June 11, 2013). CenturyLink and XO indicated they could identify some autodialer traffic, but not all, depending upon whether or not the calls are routed and delivered over dedicated connections. Both concluded, however, that even if some autodialer traffic may be identified and excluded, there will still be a portion of autodialer and other telemarketing traffic included in any reported call answer rates.

¹² NTCA, NECA, WTA, ERTA at 26 (filed May 13, 2013).

available, registration is purely voluntary, they include only originating carriers, and there is no requirement for originating providers to update the contact information as it changes. This makes available lists incomplete and unreliable. Rural carriers must have the ability to work with originating providers to resolve issues without being bounced from person to person, each with no knowledge of the situation or ability to address it. The current tedious, time-consuming and wasteful process could be made more efficient with a mandatory provider contact registry.

Every facilities-based provider in control of call routing that holds itself out as carrying long-distance voice traffic via any technology or service platform should, regardless of provider status or self-classification, be required to register the individual (or title of person) responsible for addressing call completion complaints from carriers, the method to contact that individual (via email address, phone number or some other method), and update that list regularly, e.g. every 30 days.

In its *Order*, the Commission declined to impose record retention and reporting requirements on intermediate providers, but questioned in the FNPRM whether it should.¹³ Given there is widespread agreement that many call completion problems lie with intermediate providers, some level of regulatory intervention (in addition to initial efforts directed at giving originating providers more incentives to manage intermediate entities) is necessary and appropriate.¹⁴ The Rural Associations therefore support a requirement for intermediate providers

¹³ FNPRM ¶ 122.

¹⁴ The Rural Associations do not wish to alter the fact that the originating IXC is ultimately the party responsible for ensuring that its customers' calls are completed. The Commission has emphasized that, under section 217 of the Act, carriers are responsible for the actions of their agents or other persons acting for or employed by the carriers. *See Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory Ruling, 27 FCC Rcd. 1351 (2012) ¶ 4. The FCC further clarified that a carrier remains responsible for the provision of

to register with the Commission and to provide the Commission with the same contact information described above, including the name of the individual (or title of person) responsible for addressing call completion complaints and the preferred method to contact that individual (via email address, phone number or some other method). Intermediate providers should also be required to update such information on the same schedule (*e.g.*, every 30 days). Further, intermediate providers should be required, at a minimum, to certify to the Commission that the provider does not engage in blocking or restricting calls to rural areas and does not strip or modify call detail information (*e.g.*, calling and called telephone numbers, provider OCN, *etc.*). Finally, each intermediate provider must certify that it has processes in place to monitor its performance and that the provider only routes calls either to other certified intermediate providers or directly to terminating LECs.

Such a basic certification requirement would only be effective if originating carriers are then required to use intermediate providers who have registered with and submitted completed certifications to the Commission. This approach will assure that there will no longer be a mysterious class of “providers in the middle,” which no carrier or commission has the ability to identify or to contact regarding call completion problems. It would also help assure that only quality providers, ones who are willing and able to satisfy reasonable consumer expectations, are used in the originating carriers’ routing tables.¹⁵

service to its customers even when it contracts with another provider to carry the call to its destination. *Id.* ¶ 11.

¹⁵ The Rural Associations do not suggest the Commission extend specific performance or reporting requirements to intermediate carriers at this time. Should it appear, however, that rural call completion problems continue, data on intermediate providers’ call completion performance levels could easily be obtained from covered originating providers. The Commission’s *Order* requires that such providers record and maintain specific detail on each call attempt, whether the call is handed off to an intermediate provider and, if so, which intermediate provider. *Order* ¶ 40. Covered providers would thus be able to provide both aggregate overall performance data as

The Commission has ample authority to adopt intermediate provider registration and basic certification requirements as described above. Intermediate providers are defined as “any entity that carries or processes traffic that traverses or will traverse the PSTN at any point insofar as that entity neither originates nor terminates that traffic.”¹⁶ Intermediate providers are common carriers in so far as they are “engaged in rendering communications services for hire to the public”¹⁷ and are therefore under the authority of the Commission. Thus, the Commission has ample authority to require intermediate providers to register and file certifications as described above under Title II of the Act.¹⁸

described in the *Order* and a breakout of performance data by each individual initial underlying carrier it utilizes to route calls without incurring significant additional expense. This information, in turn, would permit the Commission to quickly identify subpar underlying carriers and to take additional enforcement actions as necessary to resolve ongoing problems.

¹⁶ 47 C.F.R. § 64.1600(f).

¹⁷ 47 C.F.R. § 21.2. *See also*, 47 U.S.C. § 153(h).

¹⁸ If, for any reason, services provided by some intermediate providers are not considered to be offered on a common carriage basis, the Commission nevertheless has ancillary authority to impose the requirements described above under its Title I ancillary authority. Ancillary authority may be employed at the Commission’s discretion when the Act “covers the regulated subject” and the assertion of jurisdiction is “reasonably ancillary to the effective performance of [the Commission’s] various responsibilities.” *American Library Ass’n v. FCC*, 406 F.3d 689,691 (D.C. Cir 2005); *see also United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968). Both requirements are satisfied here. Services provided by intermediate providers clearly involve transmission of voice telecommunications traffic by wire, cable or other transmission media, and form an integral part of the PSTN. Given that the Commission can require providers of VoIP services to comply with recording, retention and reporting requirements adopted in this proceeding without necessarily reaching decisions about whether such services are offered under Title II, it can clearly impose registration and certification requirements as described above regardless of whether intermediate transmission services are offered on a public or private carriage basis.

C. Modifications or Additions to Existing Safe Harbor Provisions Should be Considered, if at all, Only After the Commission Has Collected and Analyzed Data on the Effects of Existing Rules.

The Commission seeks comment on whether it should revise the current safe harbor and whether there might be other measures carriers can take that should constitute safe harbors.¹⁹ In particular, the FNPRM asks whether safe harbors could be based on provider adherence to particular industry practices.²⁰ The FNPRM also asks if the Commission should consider adopting a performance-based safe harbor, specifically one based on a provider's record of matching or exceeding a rural ILEC's reported terminating CAR in specific OCNs (or some other threshold tied to the rural ILEC's terminating call answer rate).²¹ Finally, the Commission asks what it should take into consideration if it were to adopt standards for rural call completion performance, and what other uses could be made of reported call completion data that might help eliminate rural call completion problems.²²

The Associations have advocated eligibility for any and all safe harbors should only come after reported data shows a minimum four quarters of comparable call completion performance between a carrier's rural and non-rural areas.²³ Thus, questions in the FNPRM about additional safe harbors or additional exemptions from reporting requirements appear, at best, premature.

Finally, the question about whether a safe harbor could be based on whether a covered provider matches or exceeds rural ILECs' terminating CARs is not technically practicable. As

¹⁹ *FNPRM* ¶ 124.

²⁰ *Id.* ¶ 125.

²¹ *Id.* ¶ 126.

²² *Id.* ¶ 127.

²³ Letter from Colin Sandy, NECA, to Marlene H. Dortch, WC Docket No. 07-135, at 1 (filed Aug. 22, 2013).

explained further below, rural ILECs generally do not have access to incoming terminating call detail data necessary to prepare a terminating CAR.

D. Rural ILECs Should Not be Required to Report Incoming Call Answer Rate Data, Given That it is Unlikely Rural Providers Would Have the Necessary Information to Provide Such Reports.

The FNPRM seeks comment on whether the Commission should adopt a requirement or encourage rural ILECs to report quarterly on the number of incoming long-distance call attempts received, the number answered on their networks, and the resultant call answer rate calculation.²⁴

Rural ILECs generally do not have access to data necessary to calculate a CAR (attempts vs. completed call). Call records received from tandem providers, upon which most rural ILECs rely, are typically only provided for calls that are billable, *i.e.*, answered. Thus, rural ILECs are simply not able to calculate a CAR because they do not have access to data on call attempts, either by originating carrier or in the aggregate.

Even where rural ILECs can capture call attempts that reach their networks but are not answered by the called customer, any calculation of a CAR would likely be understated because it would not include call attempts that were blocked or otherwise terminated before they reached the rural ILEC's network. In addition, as the record in this proceeding and others show, some providers have engaged in manipulation of call data (*e.g.*, altering CPN/CN information) and have routed calls in a manner not compliant with the LERG in order to avoid applicable access charges.²⁵ Thus, much of the long distance traffic destined for rural ILEC end users goes

²⁴ FNPRM ¶ 128.

²⁵ See, *e.g.*, *Halo Wireless v. Craw-Kan Telephone Cooperative, Inc.*, File No: TC-2012-0331, Report and Order (Mo. PSC, Aug. 1, 2012); *BellSouth Telecommunications LLC d/b/a AT&T Tennessee v. Halo Wireless, Inc.*, Docket No. 11-00119, Order (Tenn. Reg. Auth., Jan. 26, 2012); *Complaint of TDS TELECOM on Behalf of Its Subsidiaries Against Halo Wireless, Inc., Transcom Enhanced Services, Inc. and Other Affiliates for Failure to Pay Terminating Intrastate*

undetected or is incorrectly categorized as local. If the purpose of such a requirement would be to determine whether data provided by particular originating carriers is accurate, a more productive approach would be for the Commission to initiate audits or reviews of data provided by originating carriers to address such concerns.

E. The Commission Should Vigorously Enforce Existing Prohibitions Against Call Blocking, Choking and Other Actions That Unreasonably Hinder Rural Call Completion.

The Commission seeks comment on whether it should adopt rules formally codifying existing prohibitions on blocking, choking, reducing, or restricting traffic.²⁶ The FNPRM also asks whether there are any additional requirements, whether with respect to an entity's acts or omissions that directly block, choke, reduce, or restrict traffic, governing a provider's acts or omissions with respect to its intermediate providers, or that otherwise lead to rural call completion problems, that should be addressed.

While codifying existing policies may help avoid uncertainty regarding particular actions, it would appear preferable at this point for the Commission to focus its full efforts on

Access Charges for Traffic and for Expedited Declaratory Relief and Authority to Cease Termination of Traffic, Docket No. 34219, Order on Complaints (GA PSC, July 17, 2012); *Complaint and Petition for Relief of BellSouth Telecommunications LLC d/b/a AT&T Southeast d/b/a AT&T South Carolina v. Halo Wireless, Inc.*, Docket No. 2011-304-C, Order Granting Relief against Halo Wireless (SC PSC, July 17, 2012). See Letter from Joe A. Douglas, NECA, to Marlene H. Dortch, FCC, WC Docket No. 04-36, CC Docket No. 01-92, attach. (filed May 15, 2009). See also *Connect America Fund*, WC Docket No. 10-90, *et al.*, Report and Order and FNPRM, 26 FCC Rcd. 17663 (2011) at n.1201, *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (*USF/ICC Transformation Order*) (“For example, according to Frontier, an investigation found an “incredible amount of traffic from one telephone number” terminating to its network - an average of 43,378 minutes of interstate traffic a day. Frontier Section XV Comments at 11. According to Frontier, this number was being used to make the traffic appear to be interstate so as to mask the true intrastate nature of the calls to avoid paying intrastate access charges. *Id.*; see also USTelecom Section XV Comments at 4.”).

²⁶ FNPRM ¶ 130.

enforcement of existing policies against any practices that impede the ability of consumers and businesses in rural areas to receive the same levels of reliable service available to their more urban counterparts. Codifying rules may take time, and invite extensive debate over the precise language of particular prohibitions and requirements, potentially to the detriment of the Commission's ability to enforce overall policy goals. This is particularly of concern as network technologies continue to evolve at a rapid pace – in today's transformative environment, rules based on existing practices may become outdated as quickly as they can be written.

III. CONCLUSION

As discussed above, the Rural Associations suggest the Commission refrain from requiring covered providers to separately identify autodialer traffic, as it appears such reports would likely incorporate inconsistent data and thus be of limited or no use. The Rural Associations also support imposition of reasonable registration and basic certification requirements on intermediate providers consistent with the Commission's authority under Title I or Title II of the Act, as applicable. Further, the Commission should not consider modifying the existing safe harbor or adding new safe harbor provisions to the rules until at least a year's worth of call completion data has been gathered and analyzed, and should refrain from requiring rural ILECs to report incoming CAR data, as such companies do not typically have the information needed to compute CARs. Finally, rather than seek to codify existing prohibitions against call blocking, choking and other unreasonable call completion practices, the Rural Associations

recommend the Commission focus its full attention on targeted enforcement actions against providers who unreasonably interfere with the ability of rural consumers to make and receive calls.

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