

Nebraska Public Service Commission

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December 1, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Follow-Up to October 18, 2011 FCC Rural Call Completion Workshop

In the Matter of the Connect America Fund, WC Docket No. 10-90; National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109

Dear Chairman Genachowski:

The undersigned State Public Service and Public Utility Commissions are writing this letter to you to extend our thanks for the role that you played in arranging the "Rural Call Completion Workshop" held October 18, 2011 (the "Workshop") at offices of the Federal Communications Commission ("FCC") in Washington, D.C. Along with us, many of our colleagues and their staffs were able to attend the Workshop via the webcast. We appreciated not only Commissioner Clyburn's opening remarks and those of Sharon Gillett, Chief of the FCC's Wireline Competition Bureau, but also the insights and discussions of the panelists that the FCC was able to secure for this very important topic.

To be sure, in our efforts to address this issue in our specific states, we have heard firsthand the dire consequences that arise if a business cannot be reached, if a loved one cannot be called, and if problems exist with respect to completing calls to public safety entities. Comments during the Workshop touched on these same themes. The Workshop and the light that was shed on this epidemic problem confronting the rural areas of America was a reasonable first step toward a solution to resolve this problem. However, our individual and hopefully collective efforts in this area continue to be needed in order to bring this issue to a satisfactory

resolution. Absent these efforts, the promise of good paying jobs and the use of the Public Switched Telephone Network ("PSTN") as an engine to get the economy moving will simply be rhetoric.

We recognize and appreciate the sensitivities of suggesting to the FCC a suggested course of action that must be taken to resolve this problem. Yet, if leadership on this issue by the FCC coupled with complementary action by the affected State Commissions does not promptly occur, the epidemic of rural call blocking and incompleteness will continue. The record at the FCC and in many states already demonstrates major disruptions to commerce as well as disruption to public safety and welfare. We believe it is incumbent on the FCC and State Commissions to pursue solutions or risk even greater problems in rural America.

Each of the undersigned oversees intrastate operations of carriers that are involved in the termination of traffic over the PSTN. Leadership by the FCC on this issue from the perspective of interstate traffic would, in our view, go a long way in ensuring that we collectively do not lose the momentum established by the FCC's Workshop to understand and resolve the call completion matter.

Accordingly, we recommend, as a next step, the issuance by the FCC of a declaratory order that reaffirms two of the foundational tenets of the Communications Act of 1934, as amended. First, carriers whose customers originate calls are responsible for completion of those calls. Both Section 251(a)¹ and Section 217² provide the foundation for that fact as do long-standing FCC decisions.³ If no such responsibility exists, then consumer confidence in the

¹See 47 U.S.C. § 251(a)(1) ("Each telecommunications carrier has the duty – (1) to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers. . . .")

² Section 217 of the Act states:

In construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.

47 U.S.C. § 217.

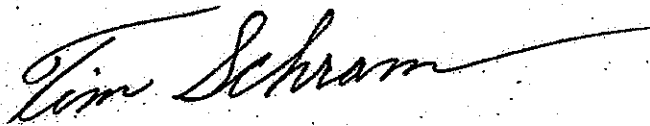
³*In the Matter of A Radio Company, Inc., Forfeiture Order*, 21 F.C.C.R. 13046, 13048 (2006) (The FCC "has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors. . ." citing *In the Matter of Eure Family Limited Partnership, Memorandum Opinion and Order*, 17 FCC Rcd 21861, 21863-64, para. 7 (2002); *In the Matter of MTD, Inc., Memorandum Opinion and Order*, 6 FCC Rcd 34 (1991) (Holding that a company's reliance on an independent contractor to construct a tower in compliance of FCC rules does not excuse that company from a forfeiture.); *In the Matter of Wagenvoord Broadcasting Co., Memorandum Opinion and Order*, 35 FCC 2d 361 (1972) (Holding a licensee responsible for violations of FCC rules despite its reliance on a consulting engineer.); *In the Matter of Petracom of Joplin, L.L.C., Forfeiture Order*, 19 FCC Rcd 6248 (Enf. Bur. 2004) (Holding a licensee liable for its employee's failure to conduct weekly EAS tests and to maintain the "issues/programs" list.); *In the Matter of Target Telecom, Inc., Order of Forfeiture*, 13 FCC Rcd 4456 (1998) (The Act "deems the acts or omissions of an agent or other person acting on behalf of a common carrier to be the acts or omissions of the carrier itself" and the Act "expressly prohibits a carrier from evading the requirements of the Act or the Commission's rules or orders by hiring someone else who then engages in conduct that contravenes these requirements.") (footnote omitted); *In Matter of Long Distance Direct, Inc., Memorandum Opinion and Order*, 15 FCC Rcd 3297, 3300-01 (2000) ("Congress's clear intent in enacting section 217 was to ensure that common carriers not flout their statutory duties by delegating them to third parties.

ability to make and receive calls will be undermined. Second, as the transition to use of broadband networks continues, the need to address these issues now becomes all the more important since both the FCC and State Commissions should help ensure that technological advancements enhance the consumer's experience whether using TDM- or IP-based services. Thus, we believe, and we trust you agree, that no carrier subject to the FCC jurisdiction should be able to "wash-its-hands" of call completion for traffic that the carrier with the direct relationship with the originating end user has arranged to be delivered to other entities for routing and completion. In addition, a strong and unequivocal statement by the FCC that it will take prompt and effective enforcement action including significant levels of forfeitures where such arrangements are found to be the culprit for the call termination problems would also act as a deterrent to mitigate the currently experienced negative impacts of failed call completions as discussed at the Workshop.

The issuance of this type of declaratory order is not a new concept. The FCC has already done so in the context of call blocking and call choking issues in June 2007.⁴ We request that a similar form of action be undertaken now due to the overarching concerns regarding public safety, consumer welfare, and economic commerce in rural areas that are being threatened today by the ongoing and increasing frequency of call completion problems.

In closing, we appreciate the opportunity to address this issue with you. We look forward to working with you to bring this issue to a proper and prompt resolution.

Sincerely,



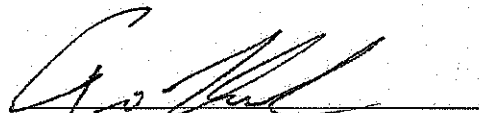
Tim Schram
Chairman
Nebraska Public Service Commission



Kevin D. Gunn
Chairman
Missouri Public Service Commission

/s/ Ellen Anderson

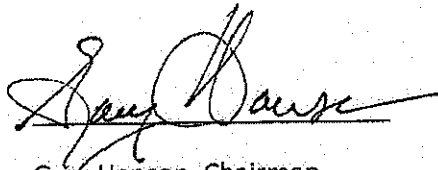
Ellen Anderson
Chair
Minnesota Public Utilities Commission



Travis Kavulla - Chairman
Montana Public Service Commission

To hold that the section does not include independent contractors would create a gaping loophole in the requirements of the Act and frustrate legislative intent.”) (Footnote omitted).

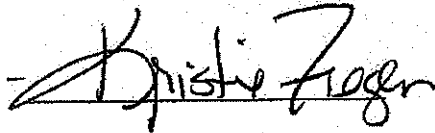
⁴See *In the Matter of Establishing Just and Reasonable Rates for Local Exchange Carriers, Call Blocking by Carriers, Declaratory Ruling and Order*, WC Docket No. 07-135, DA 07-2863, released June 28, 2007.



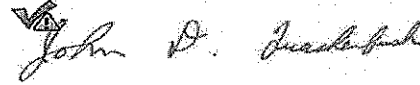
Gary Hanson, Chairman
South Dakota Public Utilities Commission



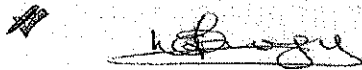
Chris Nelson, Vice Chairman
South Dakota Public Utilities Commission



Kristie Fiegen, Commissioner
South Dakota Public Utilities Commission

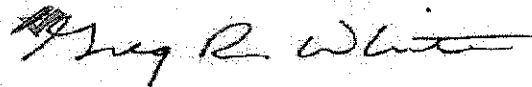


John D. Quackenbush, Chairman
Michigan Public Service Commission



Orjiakor N. Isiogu, Commissioner
Michigan Public Service Commission

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Greg R. White, Commissioner
Michigan Public Service Commission

/s/Christopher Petrie

Christopher Petrie
Secretary & Chief Counsel
Wyoming Public Service Commission

cc: *Zachary Katz, Chief Counsel and Senior Legal Advisor to the Chairman*
The Honorable Commissioner Mignon Clyburn
c/o Angela Kronenburg, Wireline Legal Advisor to Commissioner Clyburn
The Honorable Commissioner Michael Copps
c/o Lisa Hone, Wireline Advisor to Commissioner Copps
The Honorable Commissioner Robert McDowell
c/o Christine Kurth, Wireline Policy Advisor to Commissioner McDowell
Sharon Gillett, Wireline Competition Bureau Chief