

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

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

**REPLY 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

Comments filed in response to the Commission’s *Further Notice of Proposed Rulemaking*¹ make clear that it is highly premature for the Commission to revise the data retention and reporting requirements that have been imposed, but not yet implemented, by the *Rural Call Completion Order*.² The Commission should instead wait until it has implemented those rules and gathered, reviewed, and analyzed at least one year’s worth of call completion data before considering whether to revise these nascent rural call completion requirements.

The Commission should also refrain from requiring separate reports of autodialer traffic since such reports would not produce useful information for the Commission. Similarly, the Commission should refrain from requiring rural ILECs to report incoming call answer rate (CAR) data, given that companies do not typically have the information needed to compute such reports and make them useful. By contrast, application of reasonable registration and

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

² *See id.* ¶¶ 19, 40, 65.

certification requirements to intermediate providers would be consistent with the goals of this proceeding by providing more information about one of the key causes of the rural call completion problem.

Finally, the Commission should not initiate further proceedings to codify existing prohibitions against call blocking, choking and other unreasonable call completion practices, as doing so would likely delay and frustrate needed enforcement efforts.

II. DISCUSSION

A. There is No Need to Require Separate Reporting of Autodialer Traffic.

While some commenters suggested the FCC encourage carriers to develop and report information about autodialer traffic voluntarily,³ there is little support for making such reports mandatory. As the Rural Associations stated in comments, mandatory reports of such traffic are not likely to produce useful information since providers have varying abilities to identify and separate autodialer calls from non-autodialer calls.⁴ Inconsistent data reporting would prevent the Commission from drawing any useful conclusions from this information.⁵

Further, there is no evidence that originators of autodialer calls deliberately target more calls to rural areas than urban areas of the country. Thus, the inclusion or non-inclusion of autodialer calls in data reporting cannot be said to improve or bias resulting call completion statistics for rural vs. non-rural carriers.

³ Windstream at 2; Sprint at 3; Comcast at 2.

⁴ Rural Associations at 4. *See also* NCTA at 2-3; Level 3 at 7-8. Several originating carriers have stated they can only capture a portion of autodialer traffic. For example CenturyLink can only capture autodialer calls originated via its retail customer's dedicated trunk group and then only if that customer is a known autodialer. CenturyLink at 1. Autodialer traffic originated from reseller customers or originated on another carrier's network cannot be captured.

⁵ Rural Associations at 3-4.

There is also evidence that some originators of autodialer calls deliberately attempt to avoid detection to avoid prohibitions against “robocalling.” The Federal Trade Commission and the FCC have collectively received hundreds of thousands of consumer complaints pertaining to these calls.⁶ In these circumstances, the Commission would likely find it impossible to determine what percentage of autodialer traffic is actually being correctly identified and consistently excluded from reports, and such percentages would likely differ from carrier to carrier, making direct CAR comparisons difficult if not impossible. Moreover, as the Rural Associations pointed out in comments, perhaps not all autodialer traffic should be treated equally, as there are certain autodialed calls that end-users perceive as useful and want to receive. For example, “reverse 911” calls to alert local residents of a natural disaster or school closings are calls most end-users do not want to miss, and thus their exclusion from call completion data would not be helpful.⁷

Finally, the Commission’s decision to collect both Call Answer Rate (CAR) and Network Effectiveness Ratio (NER) data should allow it to evaluate rural call completion statistics regardless of whether autodialer traffic is separately identified. This is because the NER provides insight into the effects of customer behavior that may vary due to autodialer traffic.⁸ Given the above factors, there is clearly no need for the Commission to require providers to separately identify and report autodialer traffic as proposed in the *Further Notice*.

⁶ See, e.g., Jennifer C. Kerr, ‘Do Not Call’ Complaints Up Sharply as More Americans Get Robocalled, Huffington Post (Sept. 18, 2012), available at http://www.huffingtonpost.com/2012/09/16/do-not-call-complaints-robocall_n_1887822.html

⁷ Rural Associations at 5.

⁸ Order ¶ 68.

B. The Record Supports Imposing Reasonable Registration and Certification Requirements on Intermediate Providers.

In its *Order*, the Commission reminded intermediate providers that its rules “already require, within thirty days of the commencement of providing services, telecommunications carriers, certain other providers of telecommunications, interconnected VoIP providers, and certain non-interconnected VoIP providers to register with the Commission and designated agents for service of process in the District of Columbia.”⁹ The Order did not clearly state, however, whether all intermediate providers must register.

The Associations requested the Commission make clear that every facilities-based provider in control of call routing that holds itself out as carrying long-distance voice traffic is required to register with the Commission; to identify the individual (or title of person) responsible for addressing call completion complaints from carriers; to specify the method to contact that individual; and to update that list on a defined, regular basis.¹⁰ The Associations additionally requested that intermediate providers be required to certify to the Commission that the provider does not engage in blocking or restricting calls to rural areas; does not strip or modify call detail information; has processes in place to monitor its performance; and only routes calls to other certified intermediate providers or directly to terminating LECs.¹¹

The majority of commenters supported the extension of some level of oversight of and accountability by intermediate providers.¹² As NARUC states, “[a]lthough the originating carrier is ultimately responsible for completing the call, all providers routing traffic should be

⁹ *Id.* ¶ 26

¹⁰ Rural Associations at 6.

¹¹ *Id.* at 7.

¹² *E.g.*, Windstream at 2-3; Northwest Associations at 4; ANPI and Zone Telecom at 3-5.

obligated to abide by standards and rules.”¹³ Seeking a rule that requires all providers, including intermediate providers, to seek authorization from state and federal authorities, the Public Service Commission of Missouri points out, “Authorization will enable regulatory authorities to know basic information about an intermediate provider including contact information and assurance that the provider intends to comply with basic requirements and obligations.”¹⁴

To be clear, the Associations do not suggest that obligations imposed on intermediate providers should in any way undermine or reduce the obligations of originating providers to assure that rural calls are completed. The Commission recognizes “[t]here appear to be multiple factors that cause rural call completion problems,”¹⁵ and the problems must be addressed on multiple fronts. Originating providers have the primary obligation to their customers and the industry to ensure that calls originating on their networks properly complete, notwithstanding any incentives they may have to hand off calls to least-cost routers for completion.¹⁶ Originating providers are the control points for calls, and should not engage an intermediate provider that blocks or degrades traffic in an effort to minimize intercarrier compensation payments.¹⁷ Accordingly, while the Commission should adopt targeted obligations for intermediate providers as suggested by the Rural Associations to help “get to the bottom” of call completion concerns, such obligations should be seen as an additional tool for the Commission rather than a substitute for the record keeping and reporting obligations recently imposed (but not yet implemented) on originating providers.

¹³ NARUC at 5.

¹⁴ Public Service Commission of Missouri at 2-3.

¹⁵ *Order* ¶ 16.

¹⁶ *Id.* ¶ 17.

¹⁷ *See* Windstream at 2.

C. No Modifications to Existing Safe Harbor Provisions Should be Considered at This Time.

It is premature for the Commission to consider any modifications or additions to existing safe harbor provisions.¹⁸ The Order's reporting and record keeping requirements have not yet gone into effect and it is impossible to know how well, or even if, they will address rural call completion problems, or whether additional safe harbor provisions are appropriate. For years, rural consumers have been "victimized by illicit acts of call degradation, including dead air preventing any ability to hear the called party, false busy signals, continuous ringing the called party does not hear, very poor reception, incorrect calling number delivery and calls not completed at all."¹⁹ Originating providers have had ample opportunity to address the problem and have demonstrated their reluctance and/or inability to do so. Safe harbors that reduce or eliminate the ability of the Commission to review and analyze pertinent data prior to implementation of the rules that were adopted, and without any evidence that such safe harbors appropriately ensure that calls properly complete, are inappropriate.

Some commenters suggest modifications to existing safe harbors or additional safe harbor provisions based on industry best practices, data sampling, or specific routing practices.²⁰ Any one of these suggestions MAY be appropriate, but none should be considered until the Commission actually implements the rules that were adopted and collects the data that demonstrates the suggested practice results in at least four quarters of comparable call completion performance between a carrier's rural and non-rural areas.

¹⁸ Rural Associations at 9. *See also* Public Utility Commission of Oregon at 3; NARUC at 7; Public Service Commission of Missouri (at 4-5), suggesting that the current safe harbors contain additional requirements.

¹⁹ Independent LECs at 2.

²⁰ *See* Verizon and Verizon Wireless at 2-6; CenturyLink at 3-4; Sprint at 4; Level 3 at 6.

D. Rural ILEC Reports on Terminating Call Answer Rates Would be Impracticable And Misleading.

The Rural Associations explained in their comments that rural ILECs generally do not have access to the data necessary to calculate a CAR (attempts vs. completed call) because the call records they receive from tandem providers only cover calls that are completed and billable, *i.e.*, answered.²¹ The Associations also pointed out that any attempt to calculate a CAR for calls terminating in an RLEC area would be understated because it would not include call attempts that were blocked or otherwise terminated before they reached the rural ILEC's network.²²

Most commenters agree that imposing reporting obligations on rural ILECs would be unwarranted and, in the end, of little utility to the Commission.²³ While a few parties suggested rural ILEC reports might be helpful because they might quantify “the number of calls that cannot be completed because of actions/inactions by end users (both calling and called parties)”²⁴ or suggested reports from rural ILECs and tandem switching providers might “assist the FCC in identifying instances in which a call completion issue is caused by a problem at the terminating end of the transmission,”²⁵ the call completion data the Commission will receive in the reporting already required from originating providers will provide it with this insight into the effects of end user behavior on call completion data. The *Order* requires covered providers to record and retain

²¹ Rural Associations at 10.

²² *Id.*

²³ *E.g.*, Northwest Associations at 3; Public Utility Commission of Oregon at 3; Independent ILECs at 9; ANPI and Zone Telecom at 10.

²⁴ Sprint at 1.

²⁵ Comcast at 1. Similarly, NCTA (at 4) said rural ILECs should provide quarterly data reporting on the monthly availability of their switches, long distance interconnection-related trunk groups (direct trunks to long distance carriers), and tandem trunk groups, if applicable. *See also* Level 3 at 5.

“cause codes,”²⁶ explaining that “[t]o have a better understanding of the rural call termination problems, having cause codes for unanswered calls will allow us to distinguish among calls that generate busy signals, calls that ring but are not answered, and calls to unassigned numbers, and to identify calls that never reach the intended destination.”²⁷

Thus, the Commission has already addressed the need to have insight into the effects of end user behavior on call completion ratios. Requiring rural ILECs to record and report terminating call data is not only impracticable, as noted above, but would also not be a reliable indicator of the percentage of calls sent to rural ILEC exchanges that never completed, as many calls never even make it to rural ILECs’ networks.

E. Codifying Current Policy Against Call Blocking Is Not Needed At This Time And Could Detract From Call Completion Enforcement Action.

Most commenters opposed codifying existing prohibitions against call blocking, choking and other unreasonable call completion practices.²⁸ They noted the Commission currently lacks conclusive data about the scope of and reasons behind rural call completion issues, and therefore “[i]t makes sense for the Commission to evaluate these reports and data over a reasonable period of time and allow them to inform a decision as to what if any more specific rules are needed.”²⁹

CenturyLink also explained the difficulties of crafting new rules in a manner that would not prevent currently acceptable industry practices for managing traffic on the PSTN, saying the

²⁶ Rule 64.2103(e)(8) – (9) require call records to contain: (8) an indication whether the call attempt was answered, which may take the form of an SS7 signaling cause code or SIP signaling message code associated with each call attempt; and (9) an indication whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number. This indication may take the form of an SS7 signaling cause code or SIP signaling message code associated with each call attempt.

²⁷ *Order* ¶ 43.

²⁸ *See e.g.*, CenturyLink at 5; ANPI and Zone Telecom at 10.

²⁹ Windstream at 4.

FCC “should not prohibit non-discriminatory blocking, choking, reducing or restricting traffic in networks that are fundamentally engineered with industry standard blocking objectives as is found in the Public Switched Telephone Network (PSTN), e.g., LEC networks.”³⁰ CenturyLink also correctly pointed out the Commission “should not prohibit actions by carriers designed to protect [their] network from harm such as from mass call events or where misrouted traffic is sent to a network without a preexisting traffic agreement or tariff.”³¹

The Rural Associations pointed out the codification of new rules will take time, and detract from the Commission’s ability to enforce overall policy goals.³² Moreover, such rules could be difficult to craft as communications technologies continue to evolve at a rapid pace, and the Commission’s resources would be better utilized by focusing on targeted enforcement actions against providers who continue to interfere with the ability of both urban and rural consumers to make and receive calls in rural areas, rather than attempting to codify rules prohibiting what are clearly unreasonable practices and are already prohibited under existing law.

III. CONCLUSION

The comments filed in response to the Commission’s *Further Notice* generally agree the Commission should refrain from taking most of the actions proposed in the *Further Notice*. As suggested by the Rural Associations in their initial comments, the Commission should not at this time take further action to revise the data retention and reporting requirements imposed by the *Rural Call Completion Order*, but instead should focus its full attention on implementing current rules, analyzing reported data, and targeting enforcement actions against providers who continue

³⁰ CenturyLink at 5.

³¹ *Id.* at 6.

³² Rural Associations at 12.

to interfere with the ability of both urban and rural consumers to make calls in rural areas of the country.

Respectfully submitted,

NATIONAL EXCHANGE CARRIER
ASSOCIATION, INC.

By: /s/ Richard Askoff

Richard Askoff

Its Attorney

Teresa Evert, Senior Regulatory Manager

80 South Jefferson Road

Whippany, NJ 07981

(973) 884-8000

NTCA – THE RURAL BROADBAND
ASSOCIATION

By: /s/ Jill Canfield

Jill Canfield

Director, Legal and Industry and Assistant

General Counsel

4121 Wilson Boulevard, 10th Floor

Arlington, VA 22203

(703) 351-2000

EASTERN RURAL TELECOM
ASSOCIATION

By: /s/ Jerry Weikle

Jerry Weikle

Regulatory Consultant

PO Box 6263

Raleigh, NC 27628

(919) 708-7464

WTA - ADVOCATES FOR RURAL
BROADBAND

By: /s/ Derrick Owens

Derrick Owens

Vice President of Government Affairs

317 Massachusetts Avenue N.E.,

Ste. 300C

Washington, DC 20002

(202) 548-0202

By: /s/ Gerard J. Duffy

Gerard J. Duffy

Regulatory Counsel for

WTA-Advocates for Rural Broadband

Blooston, Mordkofsky, Dickens, Duffy &

Prendergast, LLP

2120 L Street NW

Suite 300

Washington, DC 20037

(202) 659-0830

February 18, 2014