

rules requiring originating providers to record, retain, and report upon call completion metrics. Indeed, as Associations demonstrated through their detailed account of how years of clarifications, cajoling, warnings and admonishments reminding originating providers of their obligations to monitor their networks and ensure that rural calls complete were ineffective, it was ultimately just the *prospect* of having to report on their efforts that prompted a substantial improvement in call completion even before those rules took effect many months later.⁴ Put another way, it was only once sunlight was poised to shine on the practices of originating providers that circumstances for rural consumers improved.

Nonetheless and not surprisingly, the covered originating providers and their representatives who commented recommend now that the record keeping and reporting requirements be abolished and that providers should be offered flexibility to monitor their own networks.⁵ In other words, the originating providers propose to go “back to the future” and return rural consumers to the days when compliance required nothing but a promise to attempt to complete calls and keep an eye on vendors. But the plain facts show that this framework simply did not work, and returning to it now would only harm consumers. The Associations reiterate their position that the record keeping and reporting requirements should be retained at least until an effective alternative rural call completion solution (such mandated compliance with current “best practices” and accompany certification) can be adopted and implemented. The rural providers’ “primary concern” in this proceeding is that rescinding the record keeping and reporting requirements before a realistic, effective substitute is identified will also mean

⁴ See, Joint Comments of NTCA and WTA, WC Docket No. 13-39 (August 28, 2017), pp. 2-7.

⁵ See, e.g., Comments of Verizon, ITTA, CTIS, US Telecom, WC Docket No. 13-39 (August 28, 2017).

rescinding the progress that has been made on rural call completion – and rescinding the only meaningful protections that exist for rural consumers.⁶

II. RESCINDING THE RULES WITHOUT AN EFFECTIVE REPLACEMENT WILL LIKELY LEAD TO BACKSLIDING AND MORE RURAL CALL FAILURE

There is ample evidence that originating providers have not effectively monitored their networks in the past to ensure that calls to rural consumers complete, and little or no evidence that they have changed their relevant priorities or practices. The Commission has a decades-long history of reminding carriers of their obligation to complete calls. But 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 were properly completed. Despite the direct correlation between the record keeping and reporting requirements and the decline in rural call completion complaints, originating providers assert that the requirements were ineffective and argue for flexibility in monitoring their networks⁷ and some go so far as to state that rural call completion rules are “unnecessary.”⁸

Contrary to the claims of originating providers, it was the prospect and then 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 practices to ensure that rural calls were completed appropriately. Scolding originating providers to be on their best behavior never worked before.

⁶ US Telecom alleges that the rural providers “primary concern” is that any new FCC obligations will create further burdens on small providers.” Comments of US Telecom, p. 4. To the contrary, rural providers are primarily concerned with the burdens associated with calls failing to complete to their customers.

⁷ See, e.g., Comments of Verizon, AT&T, NCTA.

⁸ See, e.g., Comments of CTIA, p. 6.

Instead, the call completion problem began to abate only after the record keeping and reporting requirements were adopted.⁹ Rescinding the requirements, absent an effective replacement, at the request of the providers who had the ability to address call completion before rules were adopted and yet failed to do so, will put rural consumers at the mercy of originating providers who have every financial incentive to use routing practices that lead to call failure.

III. RURAL CALL FAILURE IMPOSES A BURDEN ON RURAL CARRIERS AND RURAL CONSUMERS THAT FAR OUTWEIGH THE BURDEN OF COMPLYING WITH MITIGATING MEASURES

Commenting providers' primary argument in support of rescinding the rules is that the record keeping and reporting requirements are burdensome.¹⁰ While there is cost associated with complying with the rules, the burden must be measured against the public benefit. The benefit of the record keeping and reporting rules is not only the resulting data, but more so, that the rules forced originating providers to effectively manage their networks to ensure that rural calls complete.

And other burdens must be accounted for as well. When rural calls fail, the burden on rural providers – many of them businesses many multiples smaller than the sizeable originating providers – is substantial. Rural providers spend countless hours tracking down originating providers and working with them to resolve issues. But the most concerning burden and harm from rural call failure falls on rural consumers. As the Commission stated: “Small businesses can lose customers who get frustrated when their calls don't go through. Urgent long distance calls from friends or family can be missed. Schools may be unable to reach parents with critical alerts, including school closings due to extreme weather. And those in need of help may be

⁹ While perhaps coincidental, there was a noticeable uptick in rural call completion complaints received by the Associations during the week after comments were filed in this proceeding.

¹⁰ Comments of CTIA, Verizon.

unable to reach public safety officials.”¹¹ The extent and ramifications of these problems, and the real costs to residential users and small businesses alike, cannot be understated. State regulators, members of Congress, the Commission, and rural carriers have been inundated with real-life examples of how doctors have been unable to communicate with hospitals and pharmacies; worried family members have been unable to reach sick or elderly relatives; job opportunities have been missed; and sales have been lost.¹² The public benefit of ensuring calls complete far outweighs the burden on a few large providers in complying with record keeping and reporting requirements, or a safe harbor. The Commission must not bow to the pressure of the originating providers to the detriment and expense of rural consumers and the Commission’s mission of consumer protection.

IV. IF THE COMMISSION RESCINDS THE CURRENT REQUIREMENTS, IT MUST REPLACE THEM WITH MINIMALLY BURDENSOME BEST PRACTICES THAT ARE KNOWN TO MITIGATE RURAL CALL FAILURE.

If the Commission rescinds its record keeping at reporting requirements, it must require not just monitoring of performance, but active *management* (as it is described by ATIS)¹³ of performance. The Commission should finally and definitively address rural call (in)completion by requiring covered providers to abide by industry best practices that impose minimal burdens,

¹¹ 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) ¶ 2.

¹² See e.g., Letter from Shirley Bloomfield, NTCA, to FCC Chairman Genachowski, WC Docket No. 10-90, *et al.* (filed Sept. 20, 2011); Letter from Tim Schram, Chairman, Nebraska PSC, *et al.*, to FCC Chairman Genachowski, WC Docket No. 10-90, *et al.* (filed Dec. 1, 2011); Letter from Michael R. Romano, NTCA, *et al.*, to Theresa Z. Cavanaugh and Margaret Dailey, Enforcement Bureau, FCC (filed June 13, 2011) (*Associations’ June 13, 2011 Letter*).

¹³ ATIS Standard on Intercarrier Call Completion/Call Termination Handbook, ATIS-0300106, (October 2015) (ATIS Handbook”), § 6.

but have been shown to be effective.¹⁴ The Associations generally agree with commenters that voluntary best practices support industry collaboration, but absent FCC intervention, originating providers have demonstrated their unwillingness to abide by practices that are known to mitigate rural call completion problems. Given the few, and comparatively low cost of penalties for failing to comply with mandates to ensure that calls complete, there remains, absent ongoing regulatory oversight, little incentive to ensure that intermediate providers properly complete calls to rural areas.

While calls can fail for a variety of reasons, poor, careless or unduly parsimonious network management has been the cause for the vast majority of rural call completion problems. There is a financial incentive for originating providers to find the least expensive intermediate providers to route calls, in many cases using chosen intermediaries even where the originating provider has adequate facilities to complete the call itself.

A. Originating Providers Should be Required to Limit the Number of Providers Who May Handle a Call

Section 6.2 of the ATIS Handbook recognizes that “as the number of providers handling a call increases, there is the potential for lengthier call setup delay, call failures or other impairments. Troubleshooting may also prove more difficult.”¹⁵ The identified best practice is to limit intermediate providers to include no more than one additional provider in the routing of a call and to insist on transparency with respect to who is handling traffic. This allows originating providers to be aware of which underlying carriers are involved in handling their traffic and to better manage call completion issues. Limiting the number of intermediate providers has proven to reduce the number of call failures.

¹⁴ See, Comments of ATT, p. 7, noting that the ATIS “best practices work.”

¹⁵ ATIS Handbook, § 6.2

This best practice is the bedrock of the record keeping and reporting “safe harbor” and it, combined with record keeping and reporting requirements, appears to have had a great impact, mitigating call completion issues.¹⁶ Nationwide intermediate provider HD Tandem recognizes this and recommends requiring best practices that include limiting the number of intermediate providers in a call path.¹⁷ CenturyLink comments on its experience and the effectiveness in limiting the number of “hops” in mitigating call completion complaints.¹⁸ And the National Association of State Utility Consumer Advocates warns that “removal of the safe harbor provision without adoption of a new rule that encourages providers to reduce the number of intermediate providers in the call paths would be an unfortunate step backwards.”¹⁹

Limiting intermediate providers in a call path imposes virtually no burden on originating providers beyond the inclusion of effective clauses in their contracts with their intermediate providers. The burden on originating providers is near nil, but the benefit is that, if implemented correctly, calls to rural consumers are almost guaranteed to complete. The cost benefit analysis tips dramatically toward a requirement.

B. The Associations do not Oppose Test Lines

Although the originating providers oppose any measures to ensure they complete their calls to rural areas, several point out the merits of test lines.²⁰ The Associations recognize the value of test lines, but point out that, as proposed by the originating providers, test line

¹⁶ 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).

¹⁷ Comments of HD Tandem, WC Docket No. 13-39 (August 28, 2017).p. 2.

¹⁸ Comments of CenturyLink, p. 1.

¹⁹ Comments of National Association of State Utility Consumer Advocates, WC Docket No. 13-39 (Aug. 28, 2017) at p. 2.

²⁰ See, e.g., Comments of Comcast, NCTA, ATIS.

requirements would force rural providers to incur the cost of setting up test lines, but there would be no corresponding obligation on the part of originating providers. In other words, rural providers and their customers, the innocent victims of rural call incompleteness, would be subject to an additional cost without assurance of a benefit.

Although rural providers are the predominant victims of schemes and practices that lead to the non-completion of rural calls, they are willing to assist in the discovery and investigation of non-completion practices in any way they can be effective. The Associations do not oppose test lines, but any test line mandate must be accompanied by reasonable cost-effective measures that require originating providers to actively manage their network and limit the number of intermediate providers in a call path.

V. COMMENTERS' FOCUS ON BILL AND KEEP AS A RURAL CALL COMPLETION SOLUTION IS A SELF-SERVING RED HERRING DESIGNED TO DRAW ATTENTION AWAY FROM THE SERIOUS ISSUE AT HAND

Commenters' claims that rural call completion problems are best addressed, in major part "by accelerating the implementation of a bill-and-keep intercarrier compensation regime"²¹ is irrelevant to rural call completion and wholly self-serving. This is highlighted by the specific Sprint proposal – namely, that "the Commission should accelerate the transition to bill-and-keep for remaining terminating elements, apply transitional terminating rates to the open end of 8YY traffic, and adopt a plan to transition originating access to a system of bill-and-keep."²²

Sprint makes no claim and produces no evidence whatsoever that there is any rural or other call completion problem with respect to either 8YY traffic or originating access traffic, and

²¹ Comments of Sprint Corporation, WC Docket No. 13-39 (Aug. 28, 2017) at p.1, Comments of AT&T, pp. 6-7

²² *Id.*, at p. 3.

the Associations know of none. There can be little doubt that Sprint's proposed "remedies" regarding 8YY toll-free calls to participating business customers and *originating* access charges have absolutely nothing to do with the termination of calls to rural customers and virtually everything to do with Sprint's focus on using this proceeding to decrease its costs and increase its profits by any and every means possible.

Even the terminating access portion of Sprint's proposal has minimal relevance to, and impact upon, rural call completion. During the present July 1, 2017 through June 30, 2018 period, RLECs are already in Step 6/Year 6 of the nine-step, nine-year downward transition of terminating access charges and reciprocal compensation rates.²³ The Associations do not believe that Sprint can seriously argue that the current \$0.003567 (yes, a little over three-tenths of a cent) per minute RLEC terminating access charge rate is "uneconomically high" or that it reasonably constitutes a significant barrier or disincentive for Sprint and its least cost router agents to complete individual calls to RLEC exchanges. They reiterate this same point with respect to the \$0.002133 per minute RLEC terminating access charge that will apply during the July 1, 2018 to June 30, 2019 period, and to the \$0.0007 per minute RLEC terminating access charge that will apply during the July 1, 2019 to June 30, 2020 period, before these RLEC terminating end office access rates go to bill-and-keep on July 1, 2020.

The Associations note that it is preposterous to claim that these current reduced, fractional-cent per minute terminating access charges still constitute a "root cause" or other significant factor encouraging the non-completion of individual rural calls. Moreover, the elimination of these last three transitional steps for RLEC terminating traffic would have an adverse impact upon the Commission's Connect America Fund – Intercarrier Compensation

²³ 47 C.F.R. §51.909(g).

(“CAF-ICC”) support mechanism calculations and its overall Universal Service Support budgets. The Associations agree with Sprint that the Commission determined – six years ago, in 2011 – that access charges should be reformed, but note that Sprint leaves out the critical fact that the Commission also determined at that time that a transition period was needed to avoid flash cuts and to enable carriers to adjust to marketplace changes and technological advancements, and limited the scope of the changes to certain elements now transitioning downward.²⁴

VI. CONCLUSION

Based on the foregoing, the Commission should retain its current recording, retention and reporting rules until such time as a demonstrably effective replacement is implemented. Relying on providers to monitor their intermediate providers was tried, but did not prove effective in addressing rural call completion problems. Rather than risk backsliding, the Commission should require covered providers to actively manage their networks and comply with ATIS best practices.

Respectfully submitted,



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²⁴ *In the Matter of Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) at par. 802.