

**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Dr. David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Commission
Investigation of the Completion of
Long-Distance Calls to Rural Areas
in Minnesota

MPUC Docket No: P999/CI-12-1329

COMMENTS OF MINNESOTA CABLE COMMUNICATIONS ASSOCIATION

I. INTRODUCTION.

Comes now the Minnesota Cable Communications Association (the “MCCA”) and, pursuant to the Minnesota Public Utilities Commission’s (the “MPUC”) Notice of Commission Investigation and Solicitation of Comments and Comments issued on January 16, 2014, submits these Comments in the above-styled proceeding. The MCCA represents Minnesota’s cable communications companies who provide video, voice and high-speed data services to approximately 900,000 Minnesota residents pursuant to franchises issued in over 600 communities throughout Minnesota. For over thirty (30) years, the MCCA has played a leading role in advocating the rights of its members, including, since the opening of Minnesota’s local exchange market to competition, representing the interests of members’ telephone operating subsidiaries before the MPUC on public policy matters affecting telecommunications services in Minnesota.

Irrespective of whether the MCCA’s members serve urban, suburban, or rural areas, every member wants all of their customers’ calls to be completed, whether their

customers place the calls or receive them and regardless of whether the calls are local or long distance. Problems with rural call completion implicate Metcalfe's Law – the value of an interconnected telecommunications network decreases when any segment of customers is unable to receive calls.

Rural call completion issues are a national concern and can and are being addressed comprehensively at a national level. The investigation and comments of the Department of Commerce raise important questions, and the MCCA appreciates the MPUC's decision to seek public comment before taking any state action with respect to the issue of rural call completion.

II. THE FCC HAS ALREADY TAKEN ACTIONS TOWARD RESOLVING RURAL CALL COMPLETION ISSUES.

The Federal Communications Commission's ("FCC") has taken several important and aggressive actions to address the issue of rural call completion.

A. FCC 2007 Declaratory Ruling on Call Blocking. On June 28, 2007, the FCC issued a declaratory ruling clarifying that interexchange carriers (IXCs) and Commercial Mobile Radio Service (CMRS) providers cannot block calls to rural areas as a form of "self-help" with respect to high terminating access charges.¹ The Declaratory Ruling warned that such conduct could violate section 201(b) of the Communications Act of 1934, which prohibits "unjust and unreasonable" practices by telecommunications carriers.²

B. Intercarrier Compensation Reform. The FCC's intercarrier compensation reforms have significantly reduced economic drivers that may have added to call

¹ *In re Call Blocking by Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629 ¶5 (June 28, 2007).

² *Id.*

completion issues in rural territories. Terminating access rates are already declining pursuant to that order and will continue to decrease until all carriers operate on a bill and keep basis.³ In addition, the *Connect America Order* prohibited service providers from altering call signaling information.

C. FCC Enforcement Action. In February 2012, the FCC issued a Declaratory Ruling underscoring its “longstanding prohibition on carriers blocking, choking, reducing or otherwise restricting traffic.”⁴ The FCC stated that it would enforce its rules against prohibited routing practices and demonstrated its willingness to do so when on March 12, 2013, it entered into a Consent Decree with Level 3 Communications, LLC with respect to Level 3’s use and monitoring of its intermediate providers and its call completion practices to rural areas.⁵ Under the Consent Decree, Level 3 agreed to company-specific reporting requirements related to rural call completion. Level 3 was also fined \$975,000.

D. FCC Rural Call Completion Rules. In November 2013 the FCC issued new rules designed to ultimately resolve the problems with rural call completion.⁶ The new rules require facilities-based, originating long-distance voice service providers, including local exchange carriers, interexchange carriers, commercial mobile radio service providers and interconnected VoIP service providers (referred to in the FCC rules as “covered providers”), to collect data on call answer rates and report that data to the FCC on a quarterly basis. It is important to emphasize that the new FCC rules are designed to

³ *In re 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 an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (Nov. 18, 2011) (“*Connect America Order*”).

⁴ *In re Developing an Unified Intercarrier Compensation Regime; Establishing Just and Reasonable Rates for Local Exchange Carriers*, 27 FCC Rcd 1351 ¶3 (Feb. 6, 2012).

⁵ *In re Level 3 Communications, LLC*, Consent Decree, 28 FCC Rcd 2272 (Mar. 12, 2013).

⁶ *In re Rural Call Completion*, 28 FCC Rcd 16154, Report and Order and Further Notice of Proposed Rulemaking, (Nov. 8, 2013)(herein the “*Call Completion Order*”).

capture data and inform the FCC's investigation with respect to long distance traffic terminating to rural customers, *including traffic carried by "intermediate providers."* The FCC has defined an "intermediate provider" 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."⁷

The new rules also attack the "false audible ringing" problem by prohibiting originating and intermediate providers from sending audible rings to the caller before the terminating provider has signaled that the called party is being alerted. The FCC has also "established dedicated avenues for rural customers and carriers to inform the [FCC] about these call completion problems."⁸

E. FCC Notice of Further Rulemaking. The FCC's rulemaking with respect to rural call completion issues is not complete. The FCC is currently receiving comments from interested parties on whether it should take additional measures to address rural call completion problems, including whether to extend the FCC's call data collection and reporting obligations to intermediate providers and rural LECs, and whether to modify the safe-harbor provisions of the initial Order.⁹

III. INDUSTRY ACTION.

The telecommunications industry has also been active in addressing rural call completion problems. Telecommunications industry representatives have participated in the FCC's Rural Call Completion Task Force, formed to address call termination issues. The Task Force has facilitated interactions between the FCC, consumers, other federal

⁷ 47 C.F.R. § 64.1600(f).

⁸ *Id.* at ¶ 11.

⁹ *Call Completion Order*, ¶122.

agencies and industry.¹⁰ Such efforts have involved the Alliance for Telecommunications Industry Solutions ("ATIS"), which through its Next Generation Interconnection Interoperability Forum ("NGIIF") has actively worked with NECA, state utility commissions and carrier representatives to address rural long distance call termination problems. For example, in August 2013, ATIS and NECA announced a voluntary Joint National Call Testing Project offering providers the opportunity to test call completion issues to rural areas. The testing project facilitates collaborative resolution between originating, intermediate and terminating carriers with respect to rural call completion issues.

ATIS has worked with carriers and utility commissions to develop standards and best practices for call handling and completion, publishing the *Intercarrier Call Completion/Call Termination Handbook*.¹¹ The *Handbook* offers best practices for addressing call termination problems, especially related to management of intermediate or underlying carriers. ATIS-NGIIF also has expanded its Service Provider Contact Directory to include interexchange carrier-to-carrier contact information, which may be used to report problems related to call completion issues between carriers. ATIS-NGIIF continues to collaborate with rural carrier associations to develop methods and procedures for conducting tests of call completions.

IV. RESPONSES TO SPECIFIC MPUC QUESTIONS.

- 1. Are intermediate providers that provide either transport or switching for intrastate Minnesota calls subject to the Commission's jurisdiction as provided in 237.74 Subd. 12 or other statute?**

¹⁰ Call Completion Order, ¶12.

¹¹ <http://www.atis.org/ngiif/Issue034.asp>.

- 2. If intermediate providers are subject to the Commission's jurisdiction, should they be required to obtain a certificate of authority or be subject to a certification/registration process?**
- 3. If intermediate providers are required to be certified or register with the Commission, should retail interexchange carriers be required to only use certified/registered intermediate providers for the termination of toll calls?**
- 4. If intermediate providers are subject to the Commission's jurisdiction, what requirements, as outlined in Minnesota Rules 7811 and 7812 are applicable and which requirements are not applicable?**
- 5. If intermediate providers are not subject to the Commission's jurisdiction, are there any actions that the Commission can take to ensure that calls to rural Minnesota customers are properly completed?**

Carriers providing intrastate telecommunications services are subject to the MPUC's jurisdiction and subject to all rules, including certification requirements, applicable to intrastate interexchange providers. The MPUC has authority to take enforcement actions against intrastate telecommunications service providers who do not maintain the appropriate certification or abide by applicable rules. However, it should not be the responsibility of retail intrastate telecommunications service providers to police whether their vendors are in compliance with state certification requirements. If the MPUC identifies problems affecting interstate calls, it should refer such matters to the FCC for further investigation and prosecution.

- 6. If intermediate providers are not subject to the Commission's jurisdiction, should the responsibility for any call termination problems rest solely with the originating interexchange carrier?**
- 7. If intermediate providers are not subject to the Commission's jurisdiction, what requirements should the Commission place on the originating interexchange carriers to ensure call termination problems do not occur?**

In view of the extensive national regulatory and industry efforts to resolve the problem of rural call completion described above, the imposition of additional state

regulatory burdens on all telecommunications carriers is unwarranted. The FCC's extensive recording, retention, and reporting rules instituted in the *Call Completion Order* augmented by its intercarrier compensation reforms and specific enforcement action is a sound strategy that should be allowed to work. The measures set forth in the *Call Completion Order* have just recently been launched. And while everyone concerned would like to see rural call completion and phantom traffic issues resolved as quickly as possible, the FCC's new recording, retention, and reporting requirements are not going to resolve the problem instantly. State by state actions to address rural call completion and phantom traffic issues run the risk of bogging down federal initiatives and interfering with the efficient operation of the nation's communications networks.

For these reasons, the MPUC should refrain from promulgating any new rules or taking any "generic" enforcement action against broad segments of intrastate telecommunications service providers. In particular, the MPUC should place no further regulatory obligations on originating LECs or IXC. Regulation of contracts between LECs, IXCs, and intermediate carriers is not warranted. Generally, most contracts service providers may have with intermediate providers contain restrictions on disclosure of contract terms and conditions.

The MPUC undoubtedly is aware that two states, Nebraska and Oregon, have chosen to hold originating LECs responsible for the actions of intermediate carriers who may or may not be engaging in conduct that results in calls failing to terminate to rural customers. There are major problems with this approach. First, the root cause of the call completion problem has not yet been determined by any governmental authority. Holding originating carriers responsible for every issue associated with every call to a

rural customer is akin to holding Ford Motors liable for every automobile accident involving a Ford. There are numerous causal factors that could result in a call being dropped (e.g. faulty equipment, user error, auto-dialers, or congestion on the rural carrier network). As the MCCA has observed above, analyzing the results of the FCC's new rules should provide a factual view of the extent of call completion problems and help identify specific instances which may warrant enforcement action against a service provider. The *Call Completion Order* specifically provides that the FCC will release data it collects from covered providers to states upon request if states can demonstrate the ability to maintain the confidentiality of the data.¹² As facts warrant, targeted enforcement actions against wrong-doers is an effective tool that is available to the FCC and the MPUC. The MCCA urges the MPUC to act prudently and determine if the FCC's and industry's efforts are fruitful before placing additional state-specific duties on all intrastate telecommunications carriers. However, the MPUC should, within the confines of its jurisdictional authority, investigate specific complaints and take enforcement action against individual entities as circumstances justify.

8. Should there be “point of contact” information for any intermediate carrier so that any call failures identified can more readily be addressed?

The MCCA does not oppose a requirement that intermediate telecommunications carriers be required to provide a point of contact so that failed calls to rural areas can be more efficiently addressed. However, the MPUC should consider whether the Service Provider Contact Directory developed by ATIS through its NGIIF, which has been expanded to include interexchange carrier contact information, meets this need.¹³

¹² *Call Completion Order*, ¶109.

¹³ <http://www.atis.org/ngiif/documents.asp>.

- 9. Should there be a requirement that any contract between an originating interexchange carrier and an intermediate carrier require the full cooperation of the intermediate carrier to resolve any call failures, including any inquiries by regulatory agencies?**

See MCCA's Response to MPUC Question Nos. 6 and 7 above.

- 10. What processes are in place to monitor call completion problems?**

- 11. What data has been collected to demonstrate that calls through the originating interexchange carrier are completing?**

Most MCCA members are "covered providers" under the *Call Completion Order*, subject to the FCC's new rules designed to deal with call completion issues. Consequently, MCCA members will be required to collect and report the following information for calls to rural carriers: the calling party number, the called party number, the date and time of the call, whether the call was handed off to an intermediate provider and if so, which one; the terminating rural carrier's Operating Company Number, whether the call was interstate or intrastate, and whether the call attempt was completed but signaled as busy, ring no answer, or unassigned number.¹⁴

- 12. If an originating interexchange carrier, do the contracts you have with intermediate providers:**
- a) ensure that all calls will be completed?**
 - b) require that if the intermediate carrier cannot complete the call, it must be handed back for completion?**
 - c) ensure that the intermediate carrier is not providing a false ring back?**
 - d) require that the intermediate carrier is not changing the originating number?**
 - e) establish how quickly a call must be completed to the terminating end-user?**
- 13. Do confidentiality clauses in contracts with intermediate providers exist that would prevent the disclosure of information needed to determine where a call**

¹⁴ 47 C.F.R. § 64.2101.

failed in the call path? If so, explain why such clauses do, or do not, interfere with resolution of call completion issues.

14. How should the Commission deal with intrastate calls in which the calling party number has been stripped, or altered so that the call appears interstate when in fact the call is intrastate?

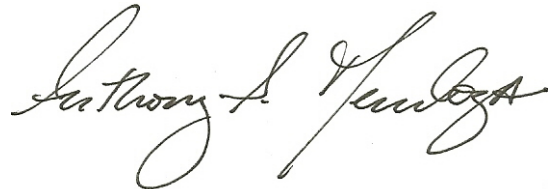
See MCCA's Response to MPUC Question Nos. 6 and 7 above.

V. CONCLUSION.

The MCCA's members have every incentive to provide their subscribers with good service, which includes completing all the calls they make and all the calls made to them. The FCC and the industry have actively attacked the problems of rural call completion. The FCC has promulgated rules that should be given time to demonstrate their effectiveness before additional burdens are placed on originating interexchange carriers.

MINNESOTA CABLE
COMMUNICATIONS ASSOCIATION

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