

February 17, 2014

Via Electronic Filing

Dr. Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place E., Suite 350
St. Paul, MN 55101-2147

Re: 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 (Formerly P999/DI-12-1329)

Dear Dr. Haar:

Enclosed via eFiling please find the Initial Comments of Minnesota Telecom Alliance in the
above entitled Docket. In addition, enclosed is a Certificate of Service.

Very truly yours,



Richard J. Johnson
Attorney At Law
(612) 877-5275
Rick.Johnson@lawmoss.com

RJJ/keb
Enclosures
cc: All parties of record
2461764v1

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Commission)	Docket No. P999/CI-12-1329
Investigation of the Completion)	(Formerly P999/DI-12-1329)
of Long-Distance Calls to)	
Rural Areas in Minnesota)	

INITIAL COMMENTS OF MINNESOTA TELECOM ALLIANCE

The Minnesota Telecom Alliance (MTA)¹ submits these comments to the Minnesota Public Utilities Commission (Commission) in response to the *Notice of Commission Investigation and Solicitation of Comments* (Notice),² which included fourteen specific issues identified by the Minnesota Department of Commerce (Department or DOC) January 13, 2014 petition³ recommending that the Commission open an investigation of rural call completion issues. The rural call completion problem is very serious and the MTA has supported steps taken to resolve this problem. MTA supports the actions of the Department and Commission in connection with rural call completion, including the commencement of this proceeding to study these issues and elicit comments to address rural call completion problems.

As more fully explained in these Comments, the MTA recommends the following:

- MTA believes that the most prudent course is to facilitate application of the requirements adopted in the Federal Communications Commission's (FCC) *Report and Order* to operate for a reasonable time period before additional regulatory

¹ The MTA is a trade association representing the interests of over 85 small, medium, and large companies that provide advanced telecommunications services, including voice, data and video to consumers throughout rural, suburban, and urban Minnesota.

² *Notice of Commission Investigation and Solicitation of Comments*, January 16, 2014.

³ *Investigation into Rural Call Completion*, Docket P999/DI-12-1329.

intervention is attempted. Accordingly, the MTA recommends that the Commission work through the FCC processes to facilitate application of these requirements with respect to traffic directed to customers in rural Minnesota.

- Allowing the FCC to act will be more appropriate because:
 - the FCC has sufficient jurisdiction over all calls, state and interstate; and
 - the FCC is significantly further into steps to resolve the problem and has already taken steps that are well thought out and likely to be quite effective.
- In contrast to the FCC:
 - Commission jurisdiction is limited to calls originating and terminating in Minnesota, which is only a portion of the calls that are subject to rural call completion problems, which will impose a significant limit on the effectiveness of any action by the Commission;
 - Commission jurisdiction over intermediate carriers is very likely to be subject to significant challenge, which will lead to an unproductive diversion of resources of the Commission and stakeholders.
- Commission jurisdiction over intermediate providers will be very difficult to establish because Commission jurisdiction is based on the identity of carriers who are providing service to the public and the location of facilities in Minnesota, and neither may be applicable to intermediate carriers; and
- As a result, independent Commission action would be premature at best and counterproductive at worst.

I. DISCUSSION

A. Background

The problem of long distance calls completing in rural areas is serious and widespread. Calls are oftentimes significantly delayed, the called party's phone never rings, the caller hears busy signals, or other problems. Rural call completion failures cause rural businesses to lose customers, cuts families off from relatives in rural areas, and creates potential for dangerous delays in public safety communications in rural areas.

There appears to be multiple factors that cause rural call completion problems, including higher than average charges for call termination in rural areas, and the numerous times a call can

be handed off among many providers in a call path. Many contend that the problem arises from the manner in which originating carriers choose to set up the signaling and routing of their calls, and the use of third party intermediate providers. They are intermediate because they do not have any direct relationship with either the originating or terminating end user on a toll call. These intermediate providers offer terminating services at low rates. The services are often inferior. Moreover, a call to a rural area is often handled by numerous providers in the calls path. Routing calls through multiple providers increases the chances that calls will be lost.

The severity of these problems led the MTA to bring this issue forward to the Department, even though the MTA recognized that the problem was substantially related to interstate traffic. Such a step appeared to be the best alternative available at the time in that there was little indication that the FCC would take comprehensive action to address this significant problem. Since that time the FCC has taken comprehensive action, as further described below. In light of the FCC action (which includes both interstate and intrastate traffic), the absence of Commission jurisdiction over interstate traffic, and the possibility of confusion between FCC and Commission actions, the MTA believes that the most effective approach at this time would be to facilitate the FCC processes rather than for the Commission to take separate action with respect to Minnesota intrastate traffic.

B. FCC Actions

i. Recent FCC rulemaking

The FCC has recently adopted new rules that provide both short and long term solutions to rural call completion problems and continues to work on this issue. At its October 2013 meeting, the FCC adopted a Report and Order, released November 8, 2013 (the *Report and*

Order).⁴ The *Report and Order* is designed to monitor the problem and get access to the information the FCC needs to investigate and eliminate the problem.

Included in the *Report and Order* are the following provisions:

- Service Providers with over 100,000 lines that make the initial choice as to how to route a call must collect and retain data for six months and file quarterly reports (calls to areas served by rural carriers will be compared with calls to metro areas to gauge where problems exist).
- Service Providers that are required to report include wireless carriers and VoIP providers as well as traditional long-distance carriers.
- Data to be collected includes call attempts, calls answered, calls that received a busy signal, calls that generated an unassigned number signal, and calls where the caller heard a ringing sound but there was no answer.
- Transmitting an audible ring to a caller's handset when the number at the other end of the line is not actually ringing is prohibited (signaling that leads the calling party to believe the phone is ringing at the called party's premises when it is not is an obvious problem because, for example, if a relative is trying to contact an elderly person and the phone is ringing but there is no answer, the relative trying to contact assumes the worst).
- Service Providers taking advantage of the safe harbor, which incorporates industry "best practices" will receive the benefit of reduced data retention and reporting obligations. An example of a best practice is to use no more than two intermediate carriers between themselves and the local carrier serving the called

⁴ *In the Matter of Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, FCC 14-135 (rel. Nov. 8, 2013).

party (routing through multiple phone companies increases the chances that calls will be lost).

- To encourage providers to have all mechanisms in place to ensure calls to rural areas are completed, such as meeting all industry best practices, providers will also have the option of requesting a waiver to have their retention and reporting obligations further reduced.

The FCC will use the reported data to investigate call completion problems and bring enforcement actions, if necessary.

The new data retention requirements are also expected to enable providers to improve performance on their own and allow state regulators to better monitor rural call performance and identify problems. Along with the *Report and Order*, the FCC has released a *Further Notice of Proposed Rulemaking* which seeks comment on additional issues related to rural call completion problems, including autodialed calls to rural areas, actions of intermediate providers, other safe harbor options, and other reporting requirements.

ii. Other FCC Actions

The FCC has taken several other actions to address the rural call completion problem, summarized as follows:

a. November 11, 2011, USF/ICC Transformation Order

The FCC's USF/ICC Transformation Order:⁵

- Established new rules requiring carriers to adjust, over a period of years, many of their terminating switched access charges effective every July 1, as part of a transition to a bill-and-keep regime.

⁵ *In the Matter of Connect America Fund*, WC Docket No. 10-90, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. November 18, 2011).

- Re-emphasized FCC longstanding prohibition on call blocking. Adopted rules to address “phantom traffic” that is, traffic that terminating networks receive that lacks certain identifying information for calls.

b. 2012 Declaratory Ruling

The Wireline Competition Bureau issued a declaratory ruling to clarify the scope of the Commission’s prohibition on blocking, choking, reducing, or restricting telephone traffic.⁶

c. FCC Enforcement Activity

On July 19, 2013, the FCC Enforcement Bureau issued an advisory to long-distance providers to take consumer complaints about rural call completion seriously.⁷ The advisory gave examples of insufficient provider responses and warned that “going forward, the FCC may take enforcement action against providers that submit such patently deficient responses to informal complaints”.⁸

There is still much work to be done on the rural call completion problem, but MTA is hopeful that the *Report and Order* will help resolve issues such as precluding false ringing, provide immediate incentives for providers to better manage completion of their calls, and give the FCC the tools necessary to identify sources of the problem towards resolution.

II. SPECIFIC QUESTIONS PRESENTED IN THE COMMISSION NOTICE

The following section provides the MTA’s response to specific questions identified by the Notice. The MTA is providing a single response to questions 1 through 4.

⁶ *In the Matter of Developing a Unified Inter-carrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers*, CC Docket No. 01-92, WC Docket No. 07-135, Declaratory Ruling, DA 12-154 (rel. Feb. 6, 2012).

⁷ FCC Enforcement Advisory No. 2013-6, DA 13-1605, Rel. July 19, 2013.

⁸ *Id.* at 3.

Question 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?

Question 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?

Question 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?

Question 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?

MTA Response to Questions 1-4:

Under Minn. Stat. Section 237.02 (and other provisions), the Commission has "jurisdiction and supervisory power over telephone and telecommunications companies."

Telephone companies are defined by Minn. Stat. Section 237.01, subp. 7 by reference to either owning "lines" in Minnesota or providing service to the public:

"Telephone company," means and applies to any person, firm, association or any corporation, private or municipal, owning or operating any telephone line or telephone exchange for hire, wholly or partly within this state, or furnishing any telephone service to the public. ... (Emphasis added.)

It is doubtful that intermediate providers meet either of the criteria of a telephone company because of the lack of ownership or operation of facilities in Minnesota and the lack of service to the public.

Telecommunications carriers are defined by Minn. Stat. Section 237.01, subp. 6 by reference to:

"Telecommunications carrier" means a person, firm, association, or corporation authorized to furnish one or more of the following telephone services to the public, but not otherwise authorized to furnish local exchange service: ... (Emphasis added.)

It is doubtful that intermediate providers meet the criteria of a telecommunications carrier because of the lack of service to the public. Rather, intermediate carriers provide service elements to telecommunications carriers. As a result, Commission jurisdiction seems likely to be subject to significant challenge.

Question 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?

MTA Response to Question 5:

As noted above, the problem involves both interstate and intrastate calls. The Commission cannot resolve interstate traffic issues. As a result, the Commission should not take action that may impede carriers from providing interstate service, which would be the claim if a Minnesota requirement caused IXCs to make changes to interstate routing and traffic delivery.

Question 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?

MTA Response to Question 6:

The Commission has jurisdiction over IXCs with respect to Minnesota intrastate services and operations. IXCs providing Minnesota intrastate services are responsible for the quality of those services, and responsibility for those services cannot be diminished or eliminated by the use of other entities (i.e. subcontractors, such as intermediate carriers) to provide parts or elements necessary to provide service to Minnesota customers. Accordingly, IXCs remain responsible for the quality of service provided in connection with their services to customers, including Minnesota intrastate services. Based on available information, there is no basis to conclude that IXCs are "intentionally impairing the speed, quality, or efficiency of service"

[within the meaning of Minn. Stat. Section 237.121 (a)(2)] or “refusing to provide a service [within the meaning of Minn. Stat. Section 237.121 (a)(4)]. However, IXCs could be “failing to provide a service ... in accordance with its applicable tariffs” [within the meaning of Minn. Stat. Section 237.121 (a)(3)]. “Failing to provide” is a broad term, which may not include isolated problems, but may include persistent or recurring problems that have been identified and brought to the attention of the IXCs and remain unaddressed.

The Commission has authority to resolve service problems relating to telecommunications carriers under Minn. Stat. Section 237.74, subd. 4. including the authority to resolve inadequate service:

If the commission finds by a preponderance of the evidence presented during the complaint proceeding that existing rates, tolls, tariffs or price lists, charges, or schedules are unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission may issue its order requiring termination of the discrimination or making the service adequate or obtainable. (Emphasis added.)

While jurisdiction over IXCs is clear, allowing the FCC process to be implemented may remain the better alternative.

Question 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?

MTA Response to Question 7:

While Commission jurisdiction over IXCs is clear in regards to Minnesota intrastate services, there is no apparent need for additional blanket requirements, which could not address completion of interstate calls to rural Minnesota customers , which are no less a problem than completion of intrastate calls to rural Minnesota customers. The newly issued FCC order and the Commission’s ability to investigate, as needed (under Minn. Stat. Section 237.74, subd. 4) are likely to be sufficient and should be allowed a chance to succeed.

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

MTA Response to Question 8:

In its Order, the FCC declined to impose record retention and reporting requirements on intermediate providers, but questioned in the *Further Notice of Proposed Rulemaking* whether it should do so.⁹ Accordingly, it appears that the FCC is addressing this issue. For the reasons previously noted, the MTA believes that it would be more efficient and likely more effective for the FCC process to be allowed a chance to succeed before any additional Minnesota state requirements are considered.

Question 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?

MTA Response to Question 9:

As further described in the MTA Response to Question 10 below, the FCC is collecting substantial data, targeted towards efficient and effective enforcement mechanisms. This targeted collection of data relating to rural call completion problems will enable the FCC to identify the source of the problems and resolve such problems. For the reasons previously noted, the MTA believes that it would be more efficient and likely more effective for the FCC process to be allowed a chance to succeed before any additional Minnesota state requirements are considered.

Question 10: What processes are in place to monitor call completion problems?

MTA Response to Question 10:

The *Report and Order* requires originating facilities-based long distance service

⁹ *Report and Order* ¶ 122.

providers to: (1) measure the call answer rate for each rural operating company number and the overall call answer rate for non rural calls in the aggregate but separated by interstate and intrastate call attempts; and (2) submit this data to the FCC on a quarterly basis.¹⁰ The *Report and Order* also required covered providers¹¹ to record and retain the following information for each long distance call attempt:

- (i) calling party number;
- (ii) called party number;
- (iii) date;
- (iv) time;
- (v) whether the call is handed off to an intermediate provider and, if so, which intermediate provider;
- (vi) whether the call is going to a rural carrier and, if so, which rural carrier, as identified by its OCN;
- (vii) whether the call is interstate; and
- (viii) whether the call attempt was answered.¹²

This extensive accumulation of data is being implemented. The MTA believes that it would be more efficient and likely more effective for the FCC process to be allowed a chance to succeed before any additional Minnesota state requirements are considered.

Question 11: What data has been collected to demonstrate that calls through the originating interexchange carrier are completing?

MTA Response to Question 11:

The data collection processes in place to monitor the performance of covered providers under the *Report and Order* are being implemented, and there has not been sufficient collection

¹⁰ *Report and Order* ¶ 68.

¹¹ The recording, retention, and reporting rules apply to providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates. In most cases, this is the calling party's long-distance provider. Covered providers include LECs, interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, and VoIP service providers. *Report and Order* ¶ 19.

¹² *Report and Order* ¶ 40.

of information at this time to support conclusions as to call completion or the effectiveness of the data collection processes.

Question 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?

MTA Response to Question 12:

This question is not applicable to MTA.

Question 13: Do confidentiality clauses in contracts with intermediate providers exist that would prevent the disclosure of information needed to determine where a call failed in the call path? If so, explain why such clauses do, or do not, interfere with resolution of call completion issues.

MTA Response to Question 13:

The MTA is not aware of any contracts involving its members that would prevent the disclosure of information needed to determine where a call failed in the call path

Question 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?

MTA Response to Question 14:

There are actions the Commission could take to address call completion issues that do not require adoption of further rules. Existing Minnesota law provides that a carrier may not engage

in unjust or unreasonable conduct with regard to intrastate telecommunications services. The Commission may pursue case by case enforcement under its existing authority as opposed to adopting new rules.

III. CONCLUSION

The MTA endorses Commission action to address rural call completion problems. From a regulatory environment perspective, the FCC *Report and Order* was issued a relatively short time ago. The new data retention and reporting rules are specifically designed to provide the FCC with the information necessary to better understand the scope and source of rural call completion problems. The Commission should avoid taking any action that might jeopardize successful implementation of current FCC data collection and reporting requirements. The FCC's data recording, retention and reporting rules apply to both interstate and intrastate calls.¹³ There is no indication right now that increased granularity of data or monitoring is necessary. MTA recommends the Commission allow time for the FCC to analyze the effects of the requirements adopted in the *Report and Order* before taking additional Minnesota specific action. The Commission should work in mutually supportive ways with the FCC.

February 17, 2014

Respectfully submitted

Minnesota Telecom Alliance

/s/ Brent J. Christensen

Brent J. Christensen
President/CEO
Minnesota Telecom Alliance
1000 Westgate Drive
St. Paul, Minnesota 55114

¹³ *Report and Order* ¶ 45.

CERTIFICATE OF SERVICE

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
(Formerly P999/DI-12-1329)

Karen E. Berg certifies that on the 17th day of February, 2014, she filed a true and correct copy of the **Initial Comments of Minnesota Telecom Alliance**, by positing it on www.edockets.state.mn.us. Said document was also served via U.S. Mail and e-mail as designated on the Official Service List on file with the Minnesota Public Utilities Commission and attached hereto.

/s/ Karen E. Berg

Karen E. Berg

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_12-1329_DI-12-1329
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_12-1329_DI-12-1329
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_12-1329_DI-12-1329
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_12-1329_DI-12-1329