

Pamela H. Hollick
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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

Dear Dr. Haar:

Enclosed via eFiling please find the Comments of **tw telecom of minnesota llc** in the above entitled Docket. In addition, enclosed is a Certificate of Service.

Very truly yours,

A handwritten signature in blue ink, appearing to read "P. Hollick", written in a cursive style.

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PH/keb
Enclosures
cc: All parties of record

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

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

**COMMENTS OF TW TELECOM OF
MINNESOTA LLC**

INTRODUCTION

tw telecom of minnesota llc (“TWTC”) respectfully submits these comments in response to the January 16, 2014 NOTICE OF COMMISSION INVESTIGATION AND SOLICITATION OF COMMENTS (the “Notice”) issued by the Minnesota Public Utilities Commission (the “Commission”). TWTC supports the Commission’s investigation into issues related to rural call completion in Minnesota. The Commission’s investigation coincides with ongoing federal efforts that also are targeted at rural call completion issues.¹ The federal process will yield valuable data that should help clarify the scope and identify causes of the rural call completion problem. TWTC therefore urges the Commission to work with and be guided by the information made available through the federal process so that efforts are not duplicated and best practices can be identified and implemented.

On November 8, 2013, the Federal Communications Commission (“FCC”) adopted recording, retention and reporting requirements designed to provide more

¹ *In the Matter of Rural Call Completion*, FCC WC Docket No. 13-39 [hereinafter the *FCC Call Completion Docket*].

information related to rural call completion.² These new requirements apply to originating long-distance providers with more than 100,000 domestic retail subscriber lines.³ Under the rules, covered providers are required to record the following data for each long-distance call attempt:

calling party number; called party number; date; time of day; whether the call is handed off to an intermediate provider and, if so, which intermediate provider; whether the call is going to a rural carrier and, if so, which rural carrier, as identified by its OCN; whether the call is interstate; and whether the call attempt was answered; and certain cause code information.⁴

TWTC expects that the rules will be approved by the Office of Management and Budget and that all carriers, including TWTC, will be filing their first reports with the FCC in September, 2014. While the FCC anticipates making the reporting data available to the states upon request,⁵ TWTC is willing to file its federal report concurrently with both the FCC and the Commission if the Commission so desires. TWTC asks, however, that any reporting requirements adopted by the Commission remain consistent with federal obligations so as not to impose additional burdens on carriers.

The FCC's new reporting rules should produce valuable data regarding the call completion problem. For example, the reports will contain detailed information by OCN, including number of calls attempted, answered, and not answered, with specific details regarding the nature of the call (interstate versus intrastate) and reason for non-answer (busy, ring no answer, or unassigned number).⁶ Such information should help clarify the nature and scope of the call completion problem, if one is identified, as well as geographic areas of particular concern. The FCC anticipates this information will facilitate its monitoring and enforcement

² *FCC Call Completion Docket*, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING, FCC 13-135, ¶ 19 (Nov. 8, 2013)[*hereinafter* FCC REPORT AND FURTHER NOPER]. The new retention and reporting rules are to be codified at 47 C.F.R. §§ 64.2101-64.2109.

³ FCC REPORT AND FURTHER NOPER at ¶ 20. TWTC is a covered provider.

⁴ *Id.* at ¶ 40.

⁵ *Id.* at ¶¶ 46-47 and note 133.

⁶ *Id.* at ¶ 65.

activities.⁷ The Commission should be similarly guided by the data. TWTC therefore respectfully requests the Commission use the FCC's data to guide its efforts going forward.

RESPONSE TO 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?

Answer: An intermediate provider is "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."⁸ The Commission's jurisdiction extends to "telephone and telecommunications companies" doing business in Minnesota.⁹ This means the Commission can regulate companies that: 1) own or operate telephone lines or exchanges in Minnesota or 2) furnish telephone or telecommunications service to the public.¹⁰ Intermediate providers likely fall outside of this space, as they do not own or operate "telephone lines or telephone exchanges for hire" nor do they offer their services to the public.

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?

Answer: *Not applicable; see Question 1, above.*

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?

Answer: *Not applicable; see Question 1, above.*

⁷ *Id.* at ¶ 19.

⁸ 47 C.F.R. § 1600(f).

⁹ Minn. Stat. § 237.02.

¹⁰ Minn. Stat. § 237.01, subd. 6 and subd. 7.

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?

Answer: *Not applicable; see Question 1, above.*

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?

Answer: The Commission's first action should be to review and evaluate the data collected under the FCC's rules. The FCC anticipates this information will increase its ability to monitor call completion issues and to "enforce restrictions against blocking, choking, reducing, or restricting calls."¹¹ Depending on what the data reveals, the Commission may be similarly empowered to address intrastate issues.

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?

Answer: Rural call completion may be a problem, but the causes are still unclear. The data collected by the FCC should help identify and isolate these causes, thereby clarifying whether the solution to Minnesota's rural call completion problem is within the purview of the FCC, the Commission, or some combination of the two and who is best positioned to take responsibility for resolving the problem. Without knowing the nature of the call completion problem, TWTC does not believe the Commission should impose new requirements at this time.

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?

Answer: It is important to acknowledge requirements that are already in place. To the extent a telephone provider intentionally impairs the quality or

¹¹ FCC REPORT AND FURTHER NOPER at ¶ 19.

efficiency of intrastate service or fails or refuses to provide service in accordance with its applicable tariffs,¹² the Department or the Commission would be empowered to take action.¹³ Similarly, the Department and the Commission may investigate whether telecommunications service is unjustly discriminatory or inadequate.¹⁴

The data collected by the FCC should help identify and isolate the causes of any rural call completion problem, thereby clarifying whether the solution to any Minnesota-specific issues is within the purview of the FCC, the Commission, or some combination of the two. Without knowing the nature of the call completion problem, TWTC does not believe the Commission should impose new requirements at this time.

Finally, TWTC asks that the Commission refrain from adopting any requirements that would be inconsistent with the new federal reporting requirements. TWTC is willing to make duplicate filings with both the FCC and the Commission, but asks that the Commission keep any reporting requirements consistent with what is required under federal rules.

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

Answer: As discussed in Question 1, above, intermediate providers may be beyond the Commission’s jurisdiction. The FCC is currently addressing its own jurisdiction over intermediate providers and whether they should be subject to the reporting requirements discussed above.¹⁵ TWTC recommends the Commission monitor the ongoing FCC rulemaking, as a federal standard applying to all intermediate providers could allow the Commission to forego additional regulation.

¹² Minn. Stat. § 237.121.

¹³ Minn. Stat. §§ 237.46, 237.461.

¹⁴ Minn. Stat. § 237.74, subd. 4 (b).

¹⁵ FCC REPORT AND FURTHER NOPER at ¶ 122 (“We seek comment on whether we should extend these rules to intermediate providers, or a subset thereof, and on the Commission’s authority to do so.”).

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 inquires by regulatory agencies?

Answer: The FCC is in the process of evaluating its jurisdiction over intermediate providers and potential regulatory requirements. Given this uncertainty, it may be premature to impose contractual requirements at this time, as the federal process could render such terms obsolete or superfluous.

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

Answer: As discussed in the Introduction, the FCC's new rules require originating long-distance providers with more than 100,000 domestic retail subscriber lines to keep records of the following information for each long-distance call attempt:

calling party number; called party number; date; time of day; whether the call is handed off to an intermediate provider and, if so, which intermediate provider; whether the call is going to a rural carrier and, if so, which rural carrier, as identified by its OCN; whether the call is interstate; and whether the call attempt was answered; and certain cause code information.¹⁶

These same providers are required to submit quarterly reports to the FCC summarizing by OCN, the number of calls attempted, answered, and not answered, with specific details regarding the nature of the call (interstate verses intrastate) and reason for non-answer (busy, ring no answer, or unassigned number).¹⁷

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

Answer: TWTC anticipates the initial FCC reports will be filed in September, 2014. Therefore, this data has not yet been reported. TWTC is working with its vendors to gather and track such data in preparation for filing the initial reports with the FCC.

¹⁶ *Id.* at ¶¶ 20, 40.

¹⁷ *Id.* at ¶ 65.

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?

Answer: TWTC contracts with several providers for services, including the transport and termination of traffic. Each of those contracts has typical provisions found in legal contracts, such as the agreement to comply with legal and regulatory requirements, and if those requirements change, to modify the agreement to reflect the change in law. So if there is a change in requirements imposed by the FCC or a state commission, those contracts can be modified to include the changes in law. Implicit in the agreement to comply with regulatory requirements is the obligation to deliver the traffic to the next point in the call path. The FCC has made it very clear that any attempt to “block, choke, reduce, or restrict traffic on calls placed to customers of rural telephone companies” may be an unjust and unreasonable practice in violation of federal law.¹⁸ Federal rules also expressly prohibit alteration or removal from calling information.¹⁹ Such practices are therefore already addressed, even if not specifically set forth in detail, in TWTC’s contracts. In addition, some contracts have certain performance metrics, such as call completion or answer seizure ratio service levels, which track the total number of answered calls. Typically if there are recurring errors or deficiencies, the contracts call for root cause analysis to be performed. Not all contracts have the performance metrics or information as outlined in subpart (a) through (f). TWTC is, however,

¹⁸ *Id.* at ¶ 18 (citing 47 U.S.C. § 201 (b)).

¹⁹ 47 C.F.R. § 64.1601 (a).

working with various vendors to track information on various metrics for purposes of gathering and reporting data to the FCC and other regulatory agencies.

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.

Answer: TWTC has contracts with various vendors and those contracts have confidentiality provisions to ensure that the CPNI of customers and vendors is protected. The Commission, as well as the FCC, can require information to be disclosed but must ensure that underlying customer information is protected.

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?

Answer: The Commission can deal with such situations in the context of existing obligations. First, such practices violate federal rules.²⁰ Second, the Commission has jurisdiction over the quality of both telephone and telecommunications service provided in Minnesota.²¹ To the extent these practices are inconsistent with obligations that apply to Minnesota intrastate calls, the Commission could pursue enforcement actions on a case-by-case basis.

CONCLUSION

TWTC appreciates the Commission's interest in this important matter and supports ongoing efforts to improve call completion in rural portions of Minnesota. The information that will be reported to the FCC later this year should help identify the scope and causes of any call completion problem identified in Minnesota. Using this information, the FCC and the Commission both appear committed to finding an

²⁰ 47 C.F.R. § 64.1601 (a); *In the Matter of Connect America Fund*, FCC WC Docket No. 10-90, REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING, FCC 11-161, ¶¶ 702-705 (Nov. 18, 2011).

²¹ Minn. Stat. §§ 237.121; 237.74, subd. 4 (b).

appropriate solution. TWTC looks forward to assisting both regulatory bodies in these efforts.

Dated: February 17, 2014

tw telecom of minnesota, llc

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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

Karen E. Berg certifies that on the 17th day of February, 2014, she filed a true and correct copy of **Comments of tw telecom of minnesota llc**, 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

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