

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF
THE INDIANA UTILITY REGULATORY COMMISSION

I. Introduction and Summary

The Indiana Utility Regulatory Commission (“Indiana Commission” or “IURC”) respectfully submits these comments in response to the FCC’s Report and Order and Further Notice of Proposed Rulemaking (FNPRM) on rural call completion issues.¹ The Indiana Commission’s comments provide its perspective on two of the five broad topics on which the FCC sought comment in the FNPRM: intermediate providers (paragraphs 122 & 123) and additional rule changes (paragraph 130). At a high level, our comments strongly urge the FCC to:

- Extend the data recording and retention rules adopted in the Report and Order (47 C.F.R. § 64.2103) to intermediate providers
- Adopt rules that explicitly prohibit covered providers and intermediate providers from blocking, choking, reducing, and restricting any voice calls and affirmatively establish that such behavior is a violation of FCC rules and not just of federal statutes.

II. Comments

Rationale for IURC Comments

The rural call completion problems, themselves, as well as the FCC’s proposed solutions and requests for comments, support both the need for the Indiana Commission to file comments, generally, as well as the specific comments and recommendations being filed today. First, the IURC notes at least one Indiana rural ILEC has experienced call completion problems, Craigville Telephone Company. As Mr. Lee VonGunten explained to the FCC earlier this year, one of the company’s largest business customers, with over 300 customers, informed him in late September that it could “no longer accept not receiving calls” from its customers. “They plan to move their

¹ *In the Matter of Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking (FCC 13-135, rel. November 8, 2013).

telecom services back to a large national carrier.”² This illustrates IURC Commissioner Landis’ recent observation that “While the inconvenience suffered by rural residential customers and those attempting to call them is certainly significant, there is another aspect of this problem that warrants additional emphasis. Call completion problems can have a direct impact on the livelihood of individual businesses and on the overall economic climate of rural areas in Indiana and across the country.” As Commissioner Landis further noted, “Increasingly, rural providers are having to resort to extraordinary workarounds in order to assure that the calls directed to them are in fact ultimately delivered to their customers.” (In the Matter of Rural Call Completion, WC Docket No. 13-39, Commissioner Larry S. Landis - *ex parte* letter to the FCC, Oct. 24, 2013)

Second, the FCC’s proposed data recording, retention, and reporting rules apply to both interstate and intrastate calls. (para. 45)

It is of utmost concern to the IURC that the FCC did not adopt any new rules to explicitly prohibit “blocking, choking, reducing, or restricting” of any calls, *per se*, nor has it done so in the past. (The FCC has previously determined that such behavior is a violation of federal statute, and the Wireline Competition Bureau has issued two related declaratory rulings clarifying the scope of those determinations.) **Furthermore, the Report and Order does not appear to contain any penalties for engaging in these activities.** Rather, the FCC adopted rules that required “covered providers” to “record” (i.e., collect), retain, and report data on long distance voice call *attempts* (for both interstate and intrastate calls – see para. 45).

Specific questions raised in the FNPRM

A. Intermediate Providers

Discussion. The Report and Order (para. 19) excludes intermediate providers from the definition of a “covered carrier”. As a result, the FCC did not apply the new rural call completion data recording, retention, and reporting rules to intermediate carriers, let alone prohibit them from blocking, choking, reducing, or restricting traffic. These exclusions and omissions are puzzling, given that the Report and Order specifically identified the heavy reliance upon intermediate providers and least cost providers to route long distance calls and faxes to RLEC customers as one of the most important causes of rural call completion problems.

² Lee VonGunten, General Manager, Craigville Telephone Company, E-Mail to Acting Chairman Clyburn and Commissioners Rosenworcel and Pai (Sept. 26, 2013), subsequently filed as an *ex parte* letter in the FCC’s rural call completion proceeding, WC Docket No. 13-39 (Sept. 30, 2013).

In the FNPRM, however, the FCC does seek comment on whether it should extend the call data recording, retention, and reporting requirements to intermediate providers. (para. 122) The IURC supports extending the call data recording and retention requirements (47 C.F.R. § 64.2103) to intermediate providers. Extending these requirements could help the FCC and state regulators, as well as industry and consumers, to better understand which carriers are, and are not, responsible for causing or contributing to the rural call completion problems that are the subject of the Report and Order and Further Notice of Proposed Rulemaking. The IURC is not taking a position at this time regarding extending the data reporting requirements (47 C.F.R. § 64.2105) to intermediate providers.

Recommendation. Regarding potential certification requirements for intermediate providers, the Indiana Commission supports requiring those providers to “include in their rate decks a statement of the maximum number of intermediate providers they will use to deliver a call to a particular area”, as well as prohibiting any intermediate provider that refuses to provide such a statement to carry traffic for termination on the PSTN; it should be unlawful for any provider to direct such PSTN-bound traffic to such a non-complying carrier. (para. 123)

B. Additional Rule Changes

Discussion. The IURC finds it problematic that, even after two declaratory rulings on rural call completion issues (in 2007 and 2012), the formation of a rural call completion task force, and at least one workshop, plus and NPRM (released February 7, 2013) and the Report and Order, the FCC still has no rules that explicitly prohibit call “blocking, choking, reducing, and restricting” traffic, notwithstanding prior determinations by the FCC and the Wireline Competition Bureau, on several occasions, that blocking, choking, reducing, or restricting traffic is (or may be) in violation of several broad provisions of the Communications Act prohibiting common carriers from engaging in unjust and unreasonable behavior [47 U.S.C. § 201(b)] and/or from granting undue or unreasonable preferences or advantages to anyone, or subjecting anyone to any undue or unreasonable prejudice or disadvantage. [47 U.S.C. § 202(a)]

Recommendation. In response to the FCC’s query whether it should “formally [codify] existing prohibitions on blocking, choking, reducing, or restricting traffic”, the Indiana Commission urges the FCC to adopt rules that: (1) explicitly prohibit both covered providers and intermediate providers from blocking, choking, reducing, and restricting any voice calls and (2) affirmatively establish that such behavior is a violation of FCC rules and not just of federal statutes.

III. Conclusion

The Indiana Utility Regulatory Commission appreciates the opportunity to offer its comments on the issues raised in the Further Notice of Proposed Rulemaking. The IURC is not opposed to

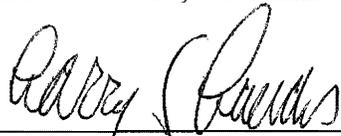
requiring carriers to record, retain, and report data on issues related to rural call completion performance and problems. However, the IURC believes the FCC's emphasis in the Report and Order on data collection ("recording"), retention, and reporting, while important, is both inadequate and incomplete – particularly since the data requirements do not apply to intermediate carriers, which the FCC specifically mentions as a significant cause of rural call completion problems (Report and Order, para. 18). Those requirements should be expanded, and new rules should be adopted, consistent with the IURC's comments.

Respectfully submitted this 16th day of January, 2014

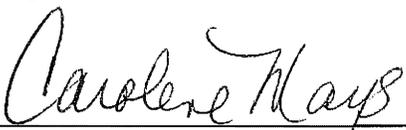
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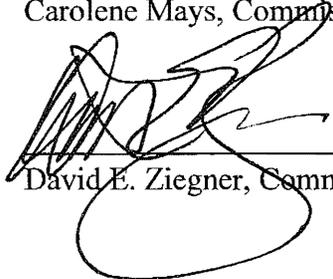
James D. Atterholt, Chairman



Larry S. Landis, Commissioner



Carolene Mays, Commissioner



David E. Ziegner, Commissioner