

distance calls to rural areas,”³ INCOMPAS members have recently indicated that they have found success in addressing some of the issues related to call failures in rural areas. In fact, one member company has been able to bring their rural call completion rates to within one percent of their call completion rates for urban and suburban areas. Collectively, our members are committed to making conscientious choices when it comes to selecting interconnecting partners and using industry best practices in order to complete long-distance calls to rural areas.

INCOMPAS is encouraged by the Commission’s decision in the recently released Order to limit the regulatory burdens and impart covered providers with the necessary flexibility to comply with the Commission’s new monitoring requirement. We generally support the Commission’s reexamination and elimination of the reporting requirements for rural call completion as members have revealed that the information gathering required for these reports was time-consuming and burdensome. Additionally, our members concur with the Commission’s assessment that the results of the data collection were of “limited utility” in terms of providing useful information for adjusting practices to mitigate the problem.⁴ INCOMPAS also supports the Commission’s new requirement to make a point of contact for rural call completion issues available on each provider’s website. This is a common-sense and low-cost measure that should increase transparency into this issue for the public and providers seeking to ascertain the reason for rural call failures.⁵

³ Senate Commerce Committee Report at 2.

⁴ Order at ¶ 61.

⁵ With respect to providers making a point of contact available, INCOMPAS suggests giving intermediate providers the same length of time—10 business days—to update their point of contact information on the Commission’s intermediate provider registry, as it allowed covered providers in the Order to update their own point of contact information on their websites. *Compare id.* at ¶ 72 *with id.* at ¶ 38.

With respect to the Commission's FNPRM on the implementation of registration and service quality requirements for the RCC Act, INCOMPAS urges the Commission to apply the same flexible regulatory approach to implementing rules for the RCC Act as it did in the Second Report and Order, to provide clarity on which intermediate providers will be subject to the Act's registration and service quality requirements, and finally to grant covered providers an initial six-month phase-in of the Act's requirement not to use unregistered intermediate providers in a long-distance telephone call chain.

II. REGULATORY FLEXIBILITY CAN ACHIEVE THE DUAL PURPOSE OF INCREASING PROVIDER ACCOUNTABILITY FOR RURAL CALL COMPLETION WHILE LESSENING THE BURDEN ON INTERCONNECTING PARTIES.

INCOMPAS represents competitive communications and technology companies that participate in the rural call completion process as covered and intermediate providers. These companies have devoted considerable attention and resources to resolving issues associated with rural call completion and, as such, have already begun to adopt solutions that have decreased their call failure rates. As mostly small and mid-sized providers, our members understand that limiting the call chain and selecting an intermediate provider that abides by industry best practices with respect to call completion is critical to maintaining its customer base. To that end, our members have relied on self-monitoring as well as the negotiation process to ensure that interconnecting partners do not engage in practices such as call looping, crank backs, and call termination and re-origination.⁶ When used in concert, these procedures have allowed our

⁶ See *id.* at ¶ 87 (proposing to require intermediate provider to take reasonable steps to prevent these practices in order to comply with section 262(d) of the RCC Act).

members to reduce the already limited incidents of call failure on their networks in rural America.

Given the robust set of procedures that providers have in place to address the rural call completion problem, INCOMPAS commends the Commission for rejecting specific mandates in the Second Report and Order⁷ in favor of an approach that “better reflect(s) strategies that have worked to reduce rural call completion problems.”⁸ As the Commission examines ways to increase the accountability of both covered and intermediate providers in this proceeding, the agency’s chosen approach provides companies with the flexibility to follow the practices—whether from the ATIS RCC Handbook⁹ or elsewhere—that best meets their unique needs for addressing this issue. Indeed, this self-determinative approach to the Commission’s new monitoring requirement for covered providers should reduce the overall burden on providers by leveraging existing practices while simultaneously allowing providers to tailor call completion solutions for their individual networks. Furthermore, resources that might have been diverted to new Commission requirements can instead be dedicated to improving and deploying competitive networks.

As the Commission seeks to develop implementing requirements that comply with the RCC Act in the FNPRM, it should do so consistent with the flexible approach adopted in the

⁷ See, e.g., *id.* at ¶ 18 (allowing covered providers with the flexibility to determine the standards and methods best suited to their individual networks for prospective monitoring), ¶ 21 (declining to mandate a specific limit on the number of intermediate providers in a call chain); and ¶ 28 (giving covered providers flexibility in the remedial steps to correct identified performance problems in intermediate providers).

⁸ *Id.* at ¶ 11.

⁹ See ATIS, *ATIS-0300106 – Intercarrier Call Completion/Call Termination Handbook 22* (2015), <https://www.atis.org/docstore/product.aspx?id=26780> (“ATIS RCC Handbook”).

Second Report and Order. This would ensure that covered and intermediate providers are not subject to additional requirements beyond those appearing in the statutory text and would provide, where possible, some regulatory symmetry in terms of meeting rural call completion obligations. For example, intermediate providers should be granted the same flexibility in terms of process to self-monitor rural call completion performance as covered providers were granted under the Order.¹⁰ Additionally, intermediate providers, typically smaller companies or providers delivering traffic via new or innovative networks, have less capacity to handle a new series of burdensome requirements, and would therefore be disproportionately inconvenienced by stricter requirements.

In light of the Commission's plans to reduce most termination charges to a bill-and-keep methodology, the agency may also wish to preserve providers' initial flexibility as it determines whether the mandated reductions in intrastate and interstate terminating switched access rates will have a significant impact on the rate of rural call failure. The Commission asserts that this proposal should "diminish the financial incentive structure that contributes to rural call completion issues."¹¹ Because the Commission plans to review the rules adopted in the Order after two years,¹² it would be logical for the agency to provide all interconnecting parties with the regulatory flexibility needed to address these new requirements in a manner consistent with their current policies while it determines the success of this significant change to provider billing practices. After two years, the Commission should have the additional information it requires to

¹⁰ See FNPRM at ¶ 90.

¹¹ See *id.* at ¶ 5.

¹² See *id.* at ¶ 51 (directing the Wireline Competition Bureau, the Enforcement Bureau, and the Consumer and Governmental Affairs Bureau to "review the progress that has been made in addressing rural call completion issues").

determine whether or not the transition to bill-and-keep is having the impact it predicts on reducing the rural call completion. Then, if necessary, the Commission can reexamine if additional monitoring or compliance measures are necessary for providers.

III. THE COMMISSION MUST CLARIFY WHICH INTERMEDIATE PROVIDERS ARE SUBJECT TO THE RCC ACT'S REGISTRATION AND SERVICE QUALITY REQUIREMENTS.

As discussed by the Commission in the FNPRM, there are critical differences between the definition of intermediate providers offered in Section 262(i)(3) of the RCC Act and Section 262(a) that describes the intermediate providers to which registration and service quality requirements will be imposed. INCOMPAS is concerned that this definition, as presented, may be both over- and under-inclusive and may therefore contribute to a competitive disadvantage for the providers that will be required by the Commission to register and comply with service quality standards. Given this concern, INCOMPAS recommends that the Commission present specific, clarifying language in any future Order on the providers that will be subject to the requirements of Section 262(a).

At issue is the criteria established in Section 262(a) that appears to present additional limiting factors to the definition of intermediate providers listed in Section 262(i)(3). According to Section 262(a), the requirements of the RCC Act apply to intermediate providers “that charge any rate to any other entity” for transmitting covered voice communications.¹³ In this case, Section 262(a)'s criteria has the effect of being over-inclusive by including, for instance, wholesale providers, which (1) hold their companies out as offering the capability to transmit covered voice communications, and (2) charge a rate for use of the network. However, once a wholesale provider has leased capacity to a third party, it no longer has decision-making

¹³ RCC Act (New section 262(a)).

authority over the traffic on its network, nor does it monitor the call flows. In this case, the criteria established by Section 262(a) would require a provider to register as an intermediate provider even though it is not fulfilling that function.

Conversely, providers that will be required to register with the Commission as intermediate providers and comply with service quality standards have concerns about the definition being under-inclusive and being left at a competitive disadvantage to non-certified competitors that might not be subject to “intermediate provider” requirements. Given the evolving telecommunications marketplace, it is possible that innovative providers that do not offer “covered voice communications” as it is defined in Section 262(i)(2) of the RCC Act become involved in the call completion process without meeting the criteria of an intermediate provider. Should the Commission choose to adopt the RCC Act’s definition of intermediate provider, INCOMPAS would encourage the Commission to regularly review the types of providers participating in the rural call completion process and offer a declaratory ruling if questions arise about a provider’s status.

IV. THE COMMISSION SHOULD GRANT COVERED PROVIDERS AN INITIAL SIX-MONTH PHASE-IN OF THE REQUIREMENT TO USE REGISTERED INTERMEDIATE PROVIDERS TO COMPLETE RURAL CALLS.

In an effort to hold all interconnecting parties accountable for rural call issues, the RCC Act requires covered providers to only use intermediate providers that have registered with the Commission for the completion of long-distance calls to rural areas. In the FNPRM, the Commission seeks comment on how long covered providers should have to ensure they comply with the Act’s requirement to use only registered intermediate providers. Commensurate with the Commission’s decision in the Second Report and Order to provide a six month phase-in of the monitoring requirement (whereby a covered provider uses prospective and retrospective

monitoring of intermediate providers to ensure that calls are completed), INCOMPAS recommends that covered providers be granted a similar, initial six month phase-in of the requirement to use registered intermediate providers in long-distance telephone call paths.

As noted by the Commission in the Order, “this call completion process is not automatic, as ‘contractual agreements must be established between all interconnecting companies.’”¹⁴ In the Order, the Commission provides a transition period of six months before implementing the new monitoring requirement based on NCTA’s recommendation “that covered providers will need some time to evaluate and renegotiate contracts with intermediate providers.”¹⁵

The FNPRM seeks comment on whether an additional 30 days—after a 30-day registration deadline for intermediate providers—is sufficient time to make “contractual and/or traffic routing adjustments needed to comply with the RCC Act and the Commission’s implementing regulations.”¹⁶ Our members would encourage the Commission to reject this proposal and to align the use of registered intermediate providers with the Commission’s six month phase-in of the monitoring requirement. Regardless of their position as a covered or intermediate provider, INCOMPAS members insist that 30 days is not enough time to make adjustments to existing contractual arrangements. Long-distance providers maintain dozens of agreements with providers throughout the call chain, and it is impractical to insist on such a compressed timeline. Small and mid-sized providers would need to devote nearly every

¹⁴ Order at ¶ 3 (quoting ATIS RCC Handbook at 22 (emphasis in original)).

¹⁵ *Id.* at ¶ 50 (citing Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 2, App’x 2 (filed Apr. 10, 2018)).

¹⁶ *Id.* at ¶ 84.

available resource to renegotiating these agreements. For these reasons, INCOMPAS proposes that the Commission initially phase-in this RCC Act requirement over the course of six months.

V. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to adopt the recommendations in its comment, as it considers the issues raised in the Third Further Notice of Proposed Rulemaking.

Respectfully submitted,

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