

Finally, INCOMPAS highlights the support in the record for an extended compliance deadline with the requirements of Section 262(b) requiring covered providers to use only registered intermediate providers to transmit covered voice communications.

I. THE COMMISSION SHOULD ADOPT A FLEXIBLE REGULATORY APPROACH TO MEETING THE IMPLEMENTING REQUIREMENTS OF THE RCC ACT.

In the Second Report and Order, the Commission wisely recognized that covered service providers would be more successful in meeting the agency’s new performance monitoring and accountability requirements for rural call completion if they were provided the regulatory flexibility to select the practices and processes that meet their individual network and business needs. Rejecting specific mandates in favor of an approach that “better reflect(s) strategies that have worked to reduce rural call completion problems”⁴ is critical given the diversity of the providers serving the rural call chain. Particularly with respect to small and mid-sized providers, burdensome mandates to address rural call completion could overextend valuable personnel and resources that could otherwise be spent attempting to bridge the digital divide through new network deployments. Furthermore, many providers have already developed suitable best practices that may have to be upended should the Commission chart a narrower course for compliance.

Given the benefits of this approach, INCOMPAS urged the Commission to similarly apply regulatory flexibility to its development of implementing requirements for the Improving Rural Call Quality and Reliability Act of 2017 (“RCC Act”). As the Commission seeks to ensure that covered and intermediate providers comply with the requirements of the RCC Act,

⁴ Second Report and Order at ¶ 11.

the Commission would be well served to ensure that these providers are not subject to overly burdensome requirements beyond those appearing in the statutory text.

This call for regulatory symmetry has widespread support in the record that should also encourage the Commission to adopt this treatment. USTelecom explains that the obligations of covered and intermediate providers are the same and that “the same flexible, standards-based approach as applied to Intermediate Providers will further help ensure that calls are completed.”⁵ West Telecom recommends a flexible approach to the development and implementation of rural call completion call compliance policies indicating that “individualized policies can be tailored to reflect applicable marketplace conditions and the changing industry environments.”⁶ Rather than adopting burdensome mandates, West Telecom proposes to allow originating providers to implement “compliance procedures based on negotiated agreements . . . that reflect the capabilities of each party and the desires and needs associated with their respective obligations.” On the issue of service quality standards, Verizon urges the Commission to accord intermediate providers the same flexibility as covered providers in meeting the requirements of Section 262(a)(2).⁷ Verizon argues that requiring intermediate providers to implement the best practices

⁵ Comments of USTelecom—The Broadband Association, WC Docket No. 13-39 (filed June 4, 2018), at 5-6 (suggesting that a flexible approach “will enable both the Commission and industry to more effectively and rapidly adapt to changing dynamics in the rural call completion environment”).

⁶ Comments of West Telecom Services, LLC in Response to Third Further Notice of Proposed Rulemaking, WC Docket No. 13-39, *et al.* (filed June 4, 2018), at 7-8 (“West Telecom Comments”).

⁷ *See* Comments of Verizon on the Third Further Notice of Proposed Rulemaking, WC Docket No. 13-39 (filed June 4, 2018), at 8-10 (“Verizon Comments”); *see also* Comments of ITTA—The Voice of America’s Broadband Providers, WC Docket No. 13-39 (filed June 4, 2018), at 5-7 (asking the Commission to implement the service quality standards provisions of the RCC Act in a manner that would accord intermediate providers the same treatment as covered providers in the Second Report and Order) (“ITTA Comments”).

proposed in the Third FNPRM would discourage “future industry cooperation to develop solutions to industry problems”⁸ and suggests that regulatory flexibility will encourage the “collaborative, voluntary endeavors” that have allowed industry to successfully address rural call delivery issues, while simultaneously collaborating to reduce fraud and abuse.⁹ As these comments show, there are ample benefits to a flexible regulatory approach, and many INCOMPAS members have recently experienced success in addressing rural call completion problems by negotiating solutions with other providers in the call chain and implementing the practices that are most appropriate for their network.

II. RURAL ACCESS STIMULATION SCHEMES IMPACT RURAL CALL COMPLETION EFFORTS AND MUST BE ADDRESSED BY THE COMMISSION IN THIS PROCEEDING.

As the Commission considers proposals in the instant proceeding to implement the requirements of the Improving Rural Call Quality and Reliability Act, the agency must acknowledge the impact that access arbitrage schemes, like rural access stimulation, have had on rural call completion rates. In its comments, Inteliquent, an intermediate provider, alerts the Commission to call blocking schemes in which “high-volume calling platforms and/or their LEC partners are intentionally rejecting traffic that is sent over the regulated path to them.”¹⁰ Despite the best efforts of providers to meet and exceed their legal obligations for rural call completion, this practice “turns the call completion problem on its head, with the terminating LEC and its

⁸ Verizon Comments at 9 (quoting the Second Report and Order at ¶ 19).

⁹ *Id.*

¹⁰ Comments of Inteliquent, WC Docket No. 13-39 (filed June 4, 2018), at 7 (“Inteliquent Comments”).

customer *refusing* to accept calls over the regulated path” from intermediate providers.¹¹ As the Commission notes in its recently released Notice of Proposed Rulemaking on eliminating access arbitrage,¹² access stimulation—or “traffic pumping”—is enabled by revenue sharing agreements between LECs and other parties (typically intermediate access providers, such as centralized equal access (“CEA”) providers, and high-volume calling platforms) in which the parties to the agreement apportion access charges paid by interexchange carriers (“IXCs”). As an intermediate provider, Inteliquent has found that call completion rates can be dramatically affected by revenue sharing arrangements by the call recipient’s affiliated network provider that ultimately completes a call.

Like Inteliquent, INCOMPAS members have also had rural calls rejected or refused either as a result of, or well-founded fear of, access stimulation schemes. This kind of on-going revenue sharing practice “evades existing Commission rules intended to stop access stimulation,” contributes to the unacceptable rate of rural call failure, and hurts customers.¹³ Without explicitly confronting rural access stimulators in the rural call completion solution efforts, there is the likelihood of unfairly maligning intermediate providers that may be diligently seeking to meet their call completion obligations for legitimate traffic. Without tying rural access stimulation practices to rural call completion explicitly, the Commission continues to put providers at odds over access stimulation allegations, with some IXCs resorting to self-help over access charges. Our members have given their best efforts to find industry solutions for the issue

¹¹ *Id.* at 8.

¹² See *Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, FCC 18-68, ¶¶ 4-7 (rel. June 5, 2018) (“Access Arbitrage NPRM”).

¹³ Access Arbitrage NPRM at ¶ 6.

of rural access stimulation, and are encouraged to see the Commission offer proposals aimed at eliminating the financial incentives to engage in traffic pumping.

Because the two issues are interrelated, INCOMPAS urges the Commission to consider solutions in the instant proceeding that connect to rural access stimulation. To that end, INCOMPAS supports suggestions that the Commission pursue action against entities that intentionally block legal rural calls, pursuant to its authority under Sections 201 and 202 of the Communications Act, while also rooting out illegal traffic pumping schemes in unison.¹⁴ Such actions would have an immediate impact on rural call completion rates and ease the monitoring burden on providers that route calls through areas reliant on the three current CEA providers. Additionally, the Commission must ensure that the measures it puts in place to address rural access stimulation target providers that engage in these schemes, with its concurrent impact on rural call completion, without placing burdensome obligations on providers that do not make the ultimate determination about call termination. Subject to the requirements of the RCC Act, the Commission should attempt to retain these providers' flexibility to route calls as necessary to meet their customers' needs while also addressing both access arbitrage and rural call delivery.

III. THE RECORD SUPPORTS A SIX-MONTH PHASE-IN OF THE REQUIREMENT TO USE REGISTERED INTERMEDIATE PROVIDERS TO COMPLETE RURAL CALLS.

One area where there appears to be consensus in the record is with respect to the compliance deadline for covered providers to use only registered intermediate providers. Although the Commission sought comment on a proposal to give covered providers an additional 30 days—after a 30-day registration deadline for intermediate providers—to comply with the requirements of Section 262(b), every participant that addressed this issue has encouraged the

¹⁴ Inteliquent Comments at 8.

Commission to adopt a longer implementation period. Like INCOMPAS, others in the record have projected that a longer compliance period will be needed based on the scope of renegotiations that will be required for covered and intermediate providers to adjust their existing contractual arrangements to meet these new obligations.¹⁵ And while a single renegotiation could likely be conducted within the Commission’s additional 30-day deadline, some covered providers will be obligated to negotiate with multiple intermediate carriers. Based on the record and the significant concerns expressed by providers over their ability to meet this deadline, the Commission should consider extending the implementation period for covered providers to use registered intermediate providers to complete rural calls.

Although there is consensus that a longer implementation period is necessary, various timeframes for complying with the requirements of Section 262(b) have been proposed. The Alliance for Telecommunications Industry Solutions (“ATIS”) recommends a three-year deadline that “would allow existing retail contracts . . . to finish their terms prior to being re-negotiated and updated.”¹⁶ The ATIS proposal would allow covered providers to not only replace unregistered intermediate providers with registered providers, but would also “allow more time for service providers to make any necessary changes to their routing systems.”¹⁷ On the other hand, Sprint recommends that the Commission give providers an additional 90 days

¹⁵ INCOMPAS Comments at 8 (describing member concerns that an additional 30-days beyond the registration deadline will not be enough time to make the necessary adjustments to existing contractual arrangements).

¹⁶ Comments of the Alliance for Telecommunications Solutions, WC Docket No. 13-39 (filed June 4, 2018), at 3.

¹⁷ *Id.* at 4.

after the intermediate carrier registration deadline.¹⁸ ITTA suggests that covered providers should have either an additional 60-days or six months to comply with the requirements to use only registered intermediate providers depending on how the Commission chooses to interpret the term “use” in the context of Section 262(b).¹⁹ If the Commission defines “use” as not allowing covered providers to rely on *any* unregistered intermediate providers in a call path, then ITTA argues that a six-month compliance deadline would be appropriate given that covered providers would need to engage “in another campaign of contract negotiations and renegotiations, as well as potential traffic routing adjustments.”²⁰

Equally concerned about the ability of members to secure renegotiated agreements before the additional 30-day deadline expires, INCOMPAS has proposed a six-month implementation period for covered providers to use registered intermediate providers. This recommendation appears to split the differences between the proposals in the record and also mirrors the phase-in period that covered providers received in the Second Report and Order to comply with new monitoring requirements.²¹ Both ITTA²² and West Telecom Services, which has also proposed a

¹⁸ See Comments of Sprint Corporation, WC Docket No. 13-39 (filed June 4, 2018), at 3 (indicating that 90 additional days will allow covered carriers to make the “requisite arrangements with their intermediate carriers”).

¹⁹ See ITTA Comments at 5.

²⁰ *Id.*

²¹ Second Report and Order at ¶ 50.

²² See ITTA Comments at 5 (“[Six month] is the same as the phase-in period that the Commission adopted for covered provider compliance with the new monitoring requirements.”)

six-month phase-in period for Section 262(b) requirements,²³ highlight the Commission’s adoption of a six-month phase-in of the monitoring requirement in the Second Report and Order and argue that a similar implementation period would be not only consistent, but necessary so that providers could evaluate and renegotiate their contract. Based on the support this proposal has received in the record, INCOMPAS urges the Commission to extend for a period of six months the compliance deadline for covered providers to use only registered intermediate providers following the 30-day registration deadline.

IV. CONCLUSION

For the reasons stated herein, INCOMPAS urges the Commission to adopt the recommendations in its reply comment, as it considers the issues raised in the Third FNPRM.

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²³ See West Telecom Comments at 10 (“With respect to implementation of the no-unregistered-provider rule for covered providers, however, a six-month phase-in period, consistent with the phase-in period for covered providers’ monitoring obligations . . . would be more appropriate.”).