Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Rural Call Completion	)	**WC Docket No. 13-39**
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COMMENTS, OPPOSITION, AND REPLY OF ITTA – THE VOICE OF AMERICA'S BROADBAND PROVIDERS

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ITTA – The Voice of America's Broadband Providers (ITTA) hereby submits these comments in support of the petition filed by USTelecom seeking reconsideration of aspects of the *Second RCC Order* in the proceeding.[1] ITTA also opposes NTCA's petition for reconsideration of the *Second RCC Order*, and replies to NTCA's opposition to the USTelecom Petition.[2]

I. INTRODUCTION AND SUMMARY

As discussed in ITTA's comments on the *Third FNPRM*, the RCC Act[3] properly places the focus of rural call completion troubles on unidentified intermediate providers.[4] It strives to

[1] Petition of USTelecom – the Broadband Association for Reconsideration, WC Docket No. 13-39 (filed June 11, 2018) (USTelecom Petition); *Rural Call Completion*, Second Report and Order and Third Further Notice of Proposed Rulemaking, FCC 18-45 (Apr. 17, 2018) (*Second RCC Order and/or Third FNPRM*).

[2] Petition of NTCA – the Rural Broadband Association for Reconsideration, WC Docket No. 13-39 (filed June 11, 2018) (NTCA Petition); Opposition of NTCA to Petition for Reconsideration of USTelecom, WC Docket No. 13-39 (filed July 17, 2018) (NTCA Opposition). Although oppositions to the petitions for reconsideration are not due until August 2, 2018, *see* Federal Communications Commission, Petitions for Reconsideration of Action in Rulemaking Proceeding, 83 Fed. Reg. 33915 (July 18, 2018), the NTCA Opposition was filed early. For the sake of expedience, here ITTA combines its early-filed reply to the NTCA Opposition with its timely-filed responses to both petitions for reconsideration.

[3] Improving Rural Call Quality and Reliability Act of 2017, Pub. L. No. 115-129 (2018) (RCC Act).

address these problems through registration requirements geared towards flushing intermediate providers out and by subjecting intermediate providers to enforceable service quality standards.[5]

With the Commission statutorily required to implement service quality standards for intermediate providers, the onerous covered provider monitoring requirements adopted by the Commission in the *Second RCC Order* subsequent to enactment of the RCC Act are duplicative and overkill. The *Third FNPRM*, in fact, seeks comment on how to ensure that the combination of covered provider and intermediate provider monitoring requirements "work harmoniously to best promote rural call completion while avoiding wasteful duplicative effort."[6] The RCC Act provides the answer in how it allocates responsibility between covered providers and intermediate providers. The best interpretation of Section 262(b) of the RCC Act[7] is that the covered provider must "ensure" only that the first intermediate provider in the call path is registered.[8] By requiring that the covered provider only use a registered intermediate provider, the statute astutely addresses the one link in the call path where it is the covered provider that could cause mischief. Once that handoff is executed, however, the RCC Act properly places the responsibility for call completion on the intermediate provider(s), and any covered provider responsibility beyond that handoff is redundant. In light of this statutory paradigm, ITTA

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[4] *See* Comments of ITTA, WC Docket No. 13-39, at 1, 10-11 (June 4, 2018) (ITTA *Third FNPRM* Comments).

[5] *See Third FNPRM* at 31, para. 68 (touting benefits of the RCC Act giving the Commission "clear authority to shine a light on intermediate providers and hold them accountable for their performance").

[6] *Id.* at 36-37, para. 90.

[7] 47 U.S.C. § 267(b) ("A covered provider may not use an intermediate provider to transmit covered voice communications unless such intermediate provider is registered under subsection (a)(1).").

[8] *See* ITTA *Third FNPRM* Comments at 3-4.

reiterates that the Commission should abandon the covered provider monitoring requirements, or at least curtail them substantially.[9]

Moreover, as USTelecom argues – and NTCA fails to refute – these requirements are fraught with pragmatic obstacles, and are unsupported by the record in this proceeding. They also will lead to profound confusion, and threaten to defeat the Commission's goal of facilitating enforcement where necessary. In the unfortunate event that the Commission does not fully vacate the covered provider monitoring requirements, it should reject NTCA's request that it reconsider its decision to not require covered providers to file their documented monitoring procedures with the Commission. Finally, with the compliance deadline for the *Second RCC Order* just over two months away, the Commission must act immediately to stay effectiveness of the covered provider monitoring requirements until the Commission can reevaluate their merits.

II. DISCUSSION

A. The Covered Provider Monitoring Requirements Suffer from Pragmatic Failures, are Unsupported by the Record, are Rife with Potential Confusion, and Contravene the RCC Act

While the bulk of the "Covered Provider Monitoring of Performance" section of the *Second RCC Order*,[10] wherein the Commission sets forth the covered provider monitoring requirements, smacks of overreach in light of the statutory scheme embodied in the RCC Act,[11] the crux of these requirements is contained in paragraphs 34 and 35 of the *Second RCC Order*.[12] There, the *Second RCC Order* gives covered providers a choice. First, they would have to

[9] *See, e.g., id.* at 10.

[10] *See Second RCC Order* at 6-26, Sec. III.A.

[11] *E.g., id.* at 15, para. 31 ("We will hold covered providers accountable for exercising oversight regarding the performance of all intermediate providers in the path of calls for which the covered provider makes the initial long-distance call path choice.").

[12] *See id.* at 17-18, paras. 34-35.

actively monitor "all intermediate providers" in a call path, i.e., even those with whom the covered provider does not have a direct contractual relationship or connection. In the alternative, they must actively monitor those intermediate providers with whom they do have a contract, in combination with modifying these contracts to include contractual restrictions on directly monitored intermediate providers, encompassing restrictions relating to specific service quality obligations, and "ensure these restrictions flow down the entire intermediate provider call path."[13] These requirements miss the mark in numerous respects. As ITTA has argued before, the Commission should eliminate them.

Pragmatic Failures. ITTA concurs with USTelecom that the requirements are imbued with pragmatic failures: "Given that it is not technically possible for Covered Providers to monitor the performance of Intermediate Providers that they are not directly connected to, the only option that non-safe harbor providers have is to incorporate contractual restrictions into their vendor contracts. However, the contractual restrictions requirement is both impractical" and, if the Commission adopts the same service quality standards for intermediate providers as it did for covered providers, unnecessary.[14] As USTelecom asserts, once the covered provider has handed the call to the first intermediate provider in the call path, "it has no technical capability to see how the call has been handled."[15] Nothing in the *Second RCC Order and Third FNPRM* contradicts this assertion. In the sentence immediately preceding enunciation of the covered provider's ostensible choice to directly monitor all intermediate providers, the *Second RCC*

[13] *Id.* at para. 34.

[14] USTelecom Petition at 3.

[15] *Id.* at 4.

Order concedes that requiring direct covered provider monitoring of the entire call chain would be "unnecessarily burdensome."[16]

In fact, through direct[17] and oblique[18] references to directly contracting with intermediate providers, the *Second RCC Order* all but admits that the only feasible way for covered providers to actively monitor intermediate providers is via direct contracts. Thus, contrary to the Commission's protestations that it is bestowing covered providers with "significant flexibility" in how they "exercise responsibility for the performance of the entire intermediate provider call path,"[19] USTelecom is absolutely correct that the *Second RCC Order* forces all covered providers to modify their direct intermediate provider contracts to ensure that contractual restrictions relating to specific intermediate provider performance requirements flow down the entire call path.[20] In arguing that the *Second RCC Order* does not require covered providers to observe the performance of intermediate providers with whom they do not directly contract – and not refuting USTelecom's assertion that covered providers do not have the wherewithal to do so even if they chose to[21] – the only "opposition" that NTCA is able to muster amounts to an affirmation of USTelecom's very point.

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[16] *Second RCC Order* at 17, para. 34.

[17] *See, e.g., id.* at 18, para. 35 (suggesting that the only way a covered provider is able to reach the behavior of downstream intermediate providers is through directly contracted intermediate providers, and while not requiring direct covered provider monitoring of the entire call chain, encouraging covered providers to directly contract with all intermediate providers in the call path notwithstanding finding that mandating direct covered provider monitoring of the entire call chain would be unnecessarily burdensome).

[18] *See, e.g., id.* at 17, para. 34 n.113 (referencing a best practice whereby contractual agreements can be used to ensure that intermediate providers meet performance standards and hold other intermediate providers accountable for performance).

[19] *E.g., id.* at 18, para. 35.

[20] *See* USTelecom Petition at 4-5.

[21] *See* NTCA Opposition at 2-3.

The one monitoring option with which covered providers are therefore left – directly monitoring those intermediate providers with whom they do have a contract, in combination with modifying these contracts to include contractual restrictions on directly monitored intermediate providers that flow down the entire call path – is also flawed. USTelecom ably depicts "severe practical issues" associated with this approach.[22] In addition, as ITTA has argued before, the record in this proceeding evinces that, to the extent rural call completion problems endure, the real source of them has been the multitude of unidentified intermediate providers that often are links in the call path to a rural area, and which covered providers may not even be aware of, let alone able to identify.[23]

Unsupported by the Record. NCTA raised the point that covered providers may not even be aware of specific downstream intermediate providers in comments on the *Second FNPRM* in this proceeding.[24] The *Second RCC Order* rejects NCTA's argument, claiming that it "mistakenly assumes that the covered provider is unable to reach the behavior of downstream intermediate providers through directly contracted intermediate providers, *and the record indicates otherwise*."[25] Yet, the ostensible record evidence on which the *Second RCC Order* relies includes a reference to third-party vendors performing monitoring; a suggested best

[22] USTelecom Petition at 6.

[23] *See* ITTA *Third FNPRM* Comments at 9-13; *see also Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16192, para. 88 (2013) ("the proliferation of rural call completion problems in recent years has coincided with the proliferation of intermediate providers, the use of which appears to contribute to call completion problems and often results in nearly untraceable call routes").

[24] *Second RCC Order* at 18, para. 35 n.118 (quoting Comments of NCTA – The Internet & Television Association, WC Docket No. 13-39, at 6 (Aug. 28, 2017) ("Originating providers generally have no way to know, much less monitor, any providers in the chain other than the one with which they have an agreement."); *see Rural Call Completion*, Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 6047 (2017) (*Second FNPRM*).

[25] *Second RCC Order* at 18, para. 35 (emphasis added).

practice whereby contractual agreements can be used to ensure that intermediate providers meet performance standards and hold other intermediate providers accountable for performance; and one commenter stating that its direct contracts with intermediate providers stipulate that the intermediate provider may use no more than one additional intermediate provider before the call is terminated.[26] In the final analysis, the *Second RCC Order* does not marshal any actual evidence that NCTA is mistaken. NTCA also does nothing to bolster the analysis, merely pointing out that the Commission rejected NCTA's contention, and suggesting that covered providers will have had ample time to negotiate with their directly connected intermediate providers.[27]

Insofar as covered providers thus are accountable for ensuring that contractual restrictions flow down to intermediate providers that they may not even be aware of, the reality is that the monitoring requirements render covered providers guarantors of the performance of the entire call path. This is nothing short of draconian.

Rife with Potential Confusion. The covered provider monitoring requirements are also rife with the potential for confusion.[28] To begin with, on the surface, proclamations of abundant covered provider flexibility, covered provider "discretion to monitor as they see fit in a manner best suited to their individual networks and business arrangements,"[29] and the cover of unelaborated-upon "reasonable monitoring efforts"[30] are countered by sweeping statements such

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[26] *See id.* at n.119 (citing nn.112-14); *see also id.* at 17, para. 34 nn.112-14. Other purported record evidence includes one commenter's suggested contractual provisions, and the Commission's own illustration of how ensuring the downstream flow of contractual restrictions should work. *See id.* at 17-18, nn.115-16.

[27] *See* NTCA Opposition at 3-4.

[28] *See* USTelecom Petition at 3.

[29] *Second RCC Order* at 22, para. 42.

[30] *Id.* at 18, para. 34.

as a covered provider is accountable for the decision of any intermediate provider with which it contracts "as to whether calls may be handed off to additional downstream providers—and if so, how many—and whether it has taken sufficient steps to ensure that calls will be completed post-handoff."[31] Yet, in the parlance of the *Second RCC Order*, the monitoring rule simply "*encourages* covered providers to ensure that calls are completed."[32] The scope of covered provider accountability, therefore, begs the question of where the *Second RCC Order* draws the line between "encourage" and "require."

For example, the *Second RCC Order* professes to only "encourage adherence to the ATIS RCC Handbook best practices,"[33] "strongly encourage covered providers to limit the number of intermediate providers in the call chain,"[34] and "encourage" covered providers to incorporate a list of 10 provisions as contractual restrictions.[35] However, as discussed above, in reality, covered providers are required to directly monitor those intermediate providers with whom they have a contract, in combination with modifying these contracts to include contractual restrictions on directly monitored intermediate providers that are reasonably calculated to ensure rural call completion and that flow down the entire call path. The *Second RCC Order* cites the ATIS RCC Handbook for the proposition that contractual restrictions can be used in this manner,[36] and then states that "[c]ontractual measures that meet this standard include limiting the use of further intermediate providers and provisions that ensure quality call completion," the latter citing to the

[31] *Id.* at 17.

[32] *E.g.*, *id.* at 6, para. 12 (emphasis added).

[33] *Id.* at 10, para. 20.

[34] *Id.* at para. 21.

[35] *Id.* at 17-18, para. 34 n.115.

[36] *Id.* at 17 n.113.

aforementioned list of 10 provisions.[37] In other words, the *Second RCC Order* ultimately ends up cobbling together three things that it "encourage[s]" into a *de facto* requirement.[38] Suffice it to say that both the substance and etymology of the covered provider monitoring requirements achieve precisely the opposite of the *Second RCC Order*'s avowed goal to "provide additional certainty to covered providers regarding the actions they must take."[39]

Furthermore, both ITTA and USTelecom have urged the Commission, in implementing the RCC Act, to generally apply to intermediate providers the same call quality standards that it applies to covered providers.[40] As ITTA has elaborated, once removing covered providers from within the ambit of the monitoring requirements, the Commission could use the monitoring requirements as a starting point for establishing the service quality rules applicable to intermediate providers, with reasonable modifications to address the infirmities discussed above.[41] In the absence of such action, with the exception of the initial handoff of a call from the covered provider to the intermediate provider with which it has a contractual relationship, each step in the call path likely will end up with at least two, and potentially more, providers sharing

[37] *Id.* at 17-18 & n.115.

[38] Even if one were to disagree that covered providers are pragmatically being forced into directly monitoring those intermediate providers with whom they have a contract, in combination with modifying these contracts to include contractual restrictions on directly monitored intermediate providers that flow down the entire call path, the putative other option – direct monitoring of all intermediate providers – is also something that the *Second RCC Order* "encourage[s]," while at the same time finding it "unnecessarily burdensome." *Id.* at 18, para. 35. In the end, every facet of the crux of the monitoring requirement – except for the obligation, which is identified as such, *see id.* at para. 34, that the contractual restrictions flow down the entire call path – is separately identified as something the Commission "encourages."

[39] *Id.* at 8, para. 16.

[40] *See* ITTA *Third FNPRM* Comments at 9-13; USTelecom Petition at 7.

[41] *See* ITTA *Third FNPRM* Comments at 13 n.45.

liability for call completion failures.[42] Not only would this be the epitome of redundancy, it also could mire any necessary enforcement efforts in labyrinthine complexity, contrary to the Commission's aim of enhancing its ability to take enforcement action.[43]

As USTelecom asserts, if all providers are held to the same reasonable standards for call quality, "there is no need to create an unwieldy and unmanageable contractual compliance framework that is administratively inefficient, time consuming, and unfair."[44] Retaining the covered provider monitoring requirements, however, would create precisely that.

Contravene the RCC Act. Even if the covered provider monitoring requirements were not laden with shortcomings, they should be eliminated for flying in the face of the statutory balancing crafted by Congress in the RCC Act. By the Commission's own admission, the primary thrust of proposing monitoring requirements for covered providers, prior to enactment of the RCC Act, was "'particularly maintaining the accountability of their intermediate providers in the event of poor performance.'"[45] The RCC Act properly placed the focus of rural call completion troubles on heretofore unidentified intermediate providers.[46] Had Congress viewed covered providers as the source of rural call completion problems, it would have addressed them in the RCC Act. Yet, there is only one substantive requirement applicable to covered providers

[42] This could include the covered provider, two intermediate providers involved in the botched call handoff, and any upstream intermediate provider also contractually obligated to ensure call completion.

[43] *See Second RCC Order and Third FNPRM* at 8, para. 16; *see also id.* at 36-37, para. 90 (seeking comment on how to ensure that the combination of covered provider and intermediate provider monitoring requirements "work harmoniously to best promote rural call completion while avoiding wasteful duplicative effort").

[44] USTelecom Petition at 7.

[45] *Second RCC Order and Third FNPRM* at 5, para. 8 (quoting *Second FNPRM*, 32 FCC Rcd at 6052, para. 11).

[46] *See* ITTA *Third FNPRM* Comments at 11.

in the RCC Act, that if they use an intermediate provider to transmit covered voice communications it must be an intermediate provider that has registered with the Commission.[47]

The RCC Act requires that the Commission adopt service quality standards applicable to intermediate providers. Many of the service quality standards on which the Commission seeks comment in the *Third FNPRM* are of the same nature as the covered provider monitoring requirements. Therefore, with the Commission statutorily required to implement service quality standards for intermediate providers, the covered provider monitoring requirements are duplicative and overkill, and threaten to overrun Congress' expressed intent on how to allocate responsibility over the call path.

By requiring that the covered provider only use a registered intermediate provider, the statute astutely addresses the one link in the call path where it is the covered provider that could cause mischief. Once that handoff is executed, however, the RCC Act properly places the responsibility for call completion on the intermediate provider(s), and any covered provider responsibility beyond that handoff is redundant.[48] If the Commission believes it must retain any

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[47] *See* 47 U.S.C. § 262(b).

[48] The Commission acknowledges that it revised subsection (b) of the rule from its proposal in the *Second FNPRM* to direct covered providers to correct performance problems, rather than hold intermediate providers accountable. *See id.* at 7, para. 15 n.44; *compare also id.* at 47, Appx. B (adopted Section 64.2111(b) of the Commission's rules) *with Second FNPRM*, 32 FCC Rcd at 6063, Appx. A (proposed Section 64.2013(b) of the Commission's rules). The explanation it proffers for this change is that "the RCC Act gives us authority to hold intermediate providers accountable for meeting service quality standards, so specifically directing covered providers to hold intermediate providers accountable is less beneficial than prior to the RCC Act's enactment." *Second RCC Order* at 7, para. 15 n.44. This explanation is flawed, however, insofar as it presupposes that there is an accountability void that must be occupied by requirements imposed on covered providers, and ignores the RCC Act's scheme for how to allocate call completion responsibilities between the covered provider and intermediate providers in the same call path. Similarly, the *Second RCC Order*'s contention that a covered provider should have responsibility over the entire call path because it is "easier to identify than an intermediate provider in a potentially lengthy and complicated call path," *id.* at 8, para. 16, is unavailing. Not only could the rationale of a potentially lengthy and complicated call path apply to why the covered provider should *not* be subject to responsibility over the entire path, it also

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of the covered provider monitoring requirements, they should be limited exclusively to the covered provider's relationship with the intermediate provider with which it is in a direct contractual relationship, without the covered provider's liability extending any further down the call path.

B. The Commission Should Confirm that Covered Providers are Not Required to File Their Documented Monitoring Procedures with the Commission

NTCA requests that the Commission reconsider its decision to not require covered providers to file their documented rural call completion monitoring procedures with the Commission.[49] In the unfortunate event that the Commission does not fully vacate the covered provider monitoring requirements, it should reject NTCA's request.[50] Here, the Commission properly finds that there is no benefit to NTCA's suggestion because the Commission already enjoys the ability to secure such documentation in the event an investigation necessitates it.[51] Moreover, even if the Commission did subscribe to NTCA's theory that compliance must be bolstered by the watchful eye of private attorneys general[52] -- which, wisely, there is no indication in the *Second RCC Order* that the Commission endorses – as the Commission points out, the likelihood of such documentation being accorded confidential treatment would undercut

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contradicts the RCC Act's scheme of bringing previously unidentified intermediate providers out from the dark for purposes of ascribing responsibility where it is due. *See* 163 Cong. Rec. H585 (daily ed. Jan. 23, 2017) (statement of Rep. David Young, who sponsored the 2017 RCC Act in the House of Representatives) ("There simply is no excuse for these intermediate providers to not fulfill their contracts and leave our rural constituents with unreliable communication service. Dropped, looped, or poor quality calls . . . give[] unfair blame to our essential local service providers when they are not the problem, they are the solution.").

[49] *See* NTCA Petition at 1.

[50] Full vacatur of the covered provider monitoring requirements would moot NTCA's request.

[51] *See Second RCC Order* at 23, para. 46.

[52] *See* NTCA Petition at 7 (in the absence of a filing requirement, "there exists no way for any party . . . to know what any covered provider's monitoring procedures are, whether they have been followed, or whether they are effective").

the purported benefits of filing the documentation.[53] To the extent, however, that the *Second RCC Order* contemplates a flexible and dynamic process of conducting monitoring that may, for instance, change periodically based on the sharing of effective solutions between industry peers,[54] a requirement to submit monitoring procedures documentation could lead to a stream of filings, which would be burdensome both for covered providers and the Commission.

C. Prompt Issuance of a Stay of the Covered Provider Monitoring Requirements is Warranted

On June 11, 2018, USTelecom filed with the Commission a petition seeking stay of the covered provider monitoring requirements.[55] ITTA filed comments fully supporting that petition.[56] Not only do both USTelecom and ITTA amply demonstrate in those pleadings why a stay is warranted, but the instant filing, combined with the substance of the USTelecom Petition, serve to buttress the merits for grant of a stay.

Moreover, the need to do so immediately is urgent. The monitoring requirements are due to go into effect on October 17, 2018, just over two months from now. As USTelecom maintained, absent a stay, covered providers "will unnecessarily be forced to incur the costs of renegotiating their vendor contracts multiple times, or be placed in a position where they risk Commission action for noncompliance" with the covered provider monitoring requirements while they wait for the Commission to act on the *Third FNPRM*, and "[t]hese costs, which need not be incurred, will necessarily result in higher rates for end users."[57] And, of course, if the Commission eliminates the covered provider monitoring requirements entirely, as it should, any

[53] *See Second RCC Order* at 23, para. 46 n.158.

[54] *See id.* at 9, para. 18.

[55] Petition of USTelecom for Stay, WC Docket No. 13-39 (filed June 11, 2018) (USTelecom Stay Petition).

[56] Comments of ITTA, WC Docket No. 13-39 (June 18, 2018).

[57] USTelecom Stay Petition at 4-5.

efforts expended by covered providers towards implementing the requirements are a complete waste. As the effective date draws closer, the Hobson's choice faced by covered providers becomes increasingly pronounced. For the foregoing reasons, the Commission must act immediately to stay effectiveness of the covered provider monitoring requirements until the Commission can reevaluate their merits, ultimately eliminating them for the reasons discussed above.

III. CONCLUSION

By way of the RCC Act, Congress has spoken both as to who is primarily responsible for rural call completion failures as well as how to allocate the responsibility for inhibiting such failures. Each call traverses only one path, and the Commission should not be imposing overlapping mandates as to who must ensure the call reaches its destination without a hitch. In order to properly establish the balance contemplated by Congress, and in light of the covered provider monitoring requirements' numerous infirmities, the Commission should vacate the covered provider monitoring requirements, or at a minimum modify them substantially. The Commission should implement the RCC Act in a manner that reasonably makes each intermediate provider in a call path accountable rather than saddling the covered provider with unduly burdensome obligations to guarantee the performance of any provider further downstream in the call chain.

Respectfully submitted,

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Certificate of Service

I, Michael J. Jacobs, hereby certify that on this 2d day of August 2018, I have caused a copy of the foregoing Comments, Opposition, and Reply to be served by electronic mail upon:

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