

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

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

**COMMENTS OF  
ITTA – THE VOICE OF AMERICA’S BROADBAND PROVIDERS**

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**June 4, 2018**

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ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits its comments in response to the *Third FNPRM* seeking comment on rules to implement the RCC Act.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

The record in the Rural Call Completion docket suggests that, to the extent rural call completion problems endure, their real source has been the multitude of intermediate providers that are often links in the path of a long distance call to a rural area.<sup>2</sup> Such problems are primarily attributed to *unidentified* intermediate providers; however, the RCC Act’s provisions, which are geared towards flushing intermediate providers out and subjecting them to enforceable service quality standards,<sup>3</sup> do not qualitatively differentiate between types of intermediate

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<sup>1</sup> *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*); Improving Rural Call Quality and Reliability Act of 2017, Pub. L. No. 115-129 (2018) (RCC Act).

<sup>2</sup> *Second RCC Order* at 2, para. 3 (“A key reason for rural call completion issues is that calls to rural areas are often handled by numerous different providers.”); *Rural Call Completion*, Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 6047, 6052, para. 10 (2017) (*RCC 2<sup>nd</sup> FNPRM*) (“we continue to believe that a key reason for rural call completion problems is that calls to rural areas are often handled by multiple intermediate providers in the call path”).

<sup>3</sup> *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”).

providers. There are some carriers that function both as covered and intermediate providers, and long have done so very much in the open.

Insofar as intermediate providers as well as covered providers wield decision making over a long-distance call path, a fundamental theme that the Commission should apply in adopting rules to implement the RCC Act is that intermediate providers generally should be accorded the same treatment as covered providers with respect to their relative roles in the call path. This outcome will avoid unnecessary additional burdens on carriers by only subjecting them to one set of requirements rather than different requirements depending on where they lie within the route of a certain call. It will also be administratively convenient for the Commission, especially in the face of the tight timelines set forth by the RCC Act for it to adopt rules implementing the legislation.<sup>4</sup>

In order to effectuate this theme, the service quality standards the Commission adopts for intermediate providers should be consistent with those applied to covered providers in the *Second RCC Order*. Moreover, in accord with the *Second RCC Order*'s provisions for direct monitoring by covered providers, covered providers should not be imputed with an obligation to ascertain the registration status of any intermediate provider other than one with which it directly contracts. Even with this more narrow and reasonable interpretation than what the *Third NPRM* proposes, covered providers will need more time than the *Third NPRM* contemplates to implement the requirement that they use only registered intermediate providers.

The Commission should interpret and implement the RCC Act in a manner that honors the RCC Act's framework for allotting relative responsibilities for call completion between intermediate providers and covered providers. In doing so, the Commission should vacate the

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<sup>4</sup> See RCC Act, 47 U.S.C. § 267(c)(1) (180 days from enactment for Commission to promulgate rules establishing intermediate provider registry, one year from enactment for Commission to establish intermediate provider service quality standards). The RCC Act was enacted on February 26, 2018.

covered provider monitoring requirements adopted in the *Second RCC Order*, and apply to covered providers only the requirements called for by the RCC Act. In the absence of taking this action, at a minimum the Commission should substantially modify the covered provider monitoring requirements. The Commission also should take the overdue action of retiring the rural call completion data recording and retention rules.

## **II. THE COMMISSION SHOULD INTERPRET SECTION 262(b) OF THE RCC ACT NARROWLY**

Section 262(b) of the RCC Act provides that “[a] covered provider may not use an intermediate provider to transmit covered voice communications unless such intermediate provider is registered under subsection (a)(1).”<sup>5</sup> The *Third FNPRM* proposes that the word “use” be applied in this context to mean that a covered provider may not rely on *any* unregistered intermediate providers in the path of a given call. Alternatively, it seeks comment on whether it should interpret “use” to mean that the covered provider must ensure only that the first intermediate provider in the call path is registered.<sup>6</sup> ITTA urges the Commission to adopt its alternative interpretation.

The fundamental problem with the *Third FNPRM*'s proposal is that it may not be possible for a covered provider to identify, let alone confirm registration of, every possible intermediate provider in a given call path. The Commission applied a notion of privity even in imposing its onerous monitoring requirements on covered providers.<sup>7</sup> For instance, the Commission required covered providers to directly monitor only the performance of intermediate providers with which they have a contractual relationship, and “decline[d] to impose an unnecessarily burdensome mandate requiring *direct* covered provider monitoring of the entire

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<sup>5</sup> 47 U.S.C. § 267(b).

<sup>6</sup> See *Second RCC Order and Third FNPRM* at 33, para. 79.

<sup>7</sup> See generally *id.* at 6-18, Sec. III.A.1.-2.

call chain.”<sup>8</sup> The Commission’s alternative suggestion that it interpret Section 262(b) to mean that the covered provider must “ensure” only that the first intermediate provider in the call path is registered is far more consistent with the principles of privity applied by the Commission in the *Second RCC Order*. It is also consistent with the principle ITTA enunciates above of crafting the rules implementing the RCC Act to be congruent with those adopted for covered providers in the *Second RCC Order*.

For similar reasons, ITTA opposes the *Third FNPRM*’s proposal that covered providers must be responsible for knowing the identity of all intermediate providers in a call path.<sup>9</sup> Such an obligation eclipses the *Second RCC Order*’s requirements for covered providers. It also “builds on and flows from” the *Third FNPRM*’s proposed interpretation of “use” in Section 262(b) of the RCC Act,<sup>10</sup> an interpretation that, as discussed above, ITTA rejects.

### **III. THE COMMISSION SHOULD ALLOCATE SUFFICIENT TIME FOR COVERED PROVIDERS TO COME INTO COMPLIANCE WITH RULES IMPLEMENTING SECTION 262(b)**

The *Third FNPRM* also seeks comment on how long covered providers should have to comply with Section 262(b) once the Commission adopts rules to implement it. It seeks comment on whether an aggregate of 60 days is sufficient to ensure that covered providers comply with the requirement to use only registered intermediate providers.<sup>11</sup> As the *Third FNPRM* suggests, compliance with any rules implementing Section 262(b) may require covered

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<sup>8</sup> *Id.* at 17, para. 34 (emphasis in original). *Cf., e.g., id.* at 16, para. 32 (“covered providers are in a position to promptly remedy rural call completion issues when they arise by virtue of their contractual relationships with intermediate providers”).

<sup>9</sup> *See id.* at 33-34, para. 81.

<sup>10</sup> *Id.*

<sup>11</sup> *See id.* at 34-35, para. 84. The Commission proposes to adopt a 30-day registration deadline for intermediate providers pursuant to Section 262(a) of the RCC Act, 47 U.S.C. § 267(a), and then seeks comment on whether an additional 30 days following this registration period is a sufficient compliance period for covered providers.

providers to make contractual and/or traffic routing adjustments.<sup>12</sup> ITTA submits that, so long as the Commission adopts ITTA's interpretation of "use" in the context of Section 262(b), an aggregate of 90 days (i.e. 60 days from the intermediate provider registration deadline) would be an appropriate compliance period for covered providers.,

In the unfortunate event, however, that the Commission adopts the *Third FNPRM's* proposed interpretation of "use," it should allocate a minimum of six months from the intermediate provider registration deadline for covered providers to come into compliance with the rules implementing Section 262(b). This is the same as the phase-in period that the Commission adopted for covered provider compliance with the new monitoring requirements.<sup>13</sup> However, as discussed above, the *Third FNPRM's* proposals to implement Section 262(b) are even more onerous for covered providers than those adopted by the Commission in the *Second RCC Order*, meaning that covered providers would not be able to simply leverage the contract renegotiations that had already occurred in the process of coming into compliance with the *Second RCC Order*. It would necessitate covered providers engaging in another campaign of contract negotiations and renegotiations, as well as potential traffic routing adjustments, all of which would warrant, at a minimum, an additional six-month phase-in to achieve.

**IV. ANY SERVICE QUALITY STANDARDS THE COMMISSION ADOPTS FOR INTERMEDIATE PROVIDERS SHOULD BE CONSISTENT WITH THOSE APPLIED TO COVERED PROVIDERS IN THE *SECOND RCC ORDER***

Section 262(c)(1)(B) of the RCC Act requires that the Commission promulgate rules to establish service quality standards for the transmission of covered voice communications by intermediate providers.<sup>14</sup> ITTA urges that the Commission implement this provision consistent

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<sup>12</sup> *Second RCC Order and Third FNPRM* at 35, para. 84.

<sup>13</sup> *See id.* at 25, para. 50.

<sup>14</sup> 47 U.S.C. § 262(c)(1)(B).

with the overarching theme discussed above that intermediate providers be accorded the same treatment as covered providers were accorded in the *Second RCC Order*.

Specifically, the Commission should require intermediate providers to temporarily or permanently remove from the routing path an intermediate provider that fails to perform at an acceptable service level, as it did for covered providers.<sup>15</sup> This would be congruent with the Commission’s “agree[ment]” that “temporarily or permanently removing the intermediate provider from the routing path’ [is] a best practice when an intermediate provider fails to perform at an acceptable service level” and must be among the remedial steps that covered providers take where appropriate.<sup>16</sup> ITTA also supports the Commission’s proposal to require intermediate providers to have processes in place to monitor their own rural call completion performance, and the Commission should model this self-monitoring rule on the monitoring rule for covered providers.<sup>17</sup>

The Commission should not, however, require intermediate providers to take steps to limit the number of intermediate providers after them in the call chain.<sup>18</sup> Nor should the Commission require intermediate providers to file annual certifications that they are taking reasonable steps to follow specified monitoring best practices,<sup>19</sup> or to certify that they do not transmit covered voice communications to other intermediate providers that are not registered

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<sup>15</sup> *Second RCC Order and Third FNPRM* at 36, para. 89.

<sup>16</sup> *Id.* at 14, para. 28 (quoting ATIS, *ATIS-0300106 - Intercarrier Call Completion/Call Termination Handbook* 34 (2015)). The *Second RCC Order* further concluded that “where an intermediate provider has sustained inadequate performance, removal from a particular route is necessary except where a covered provider can reasonably document that no alternative routes exist.” *Id.*

<sup>17</sup> *See id.* at 36, para. 90.

<sup>18</sup> *See id.* at para. 89 (noting that the Commission declined to mandate this approach for covered providers).

<sup>19</sup> *See id.* at 37, para. 92 (noting that the *Second RCC Order* rejected requiring covered providers to file an annual certification of compliance with the monitoring rule).



with the Commission.<sup>20</sup> Furthermore, the Commission should eschew mandating that intermediate providers meet or exceed any numeric rural call completion performance targets or thresholds.<sup>21</sup> This is the approach the Commission took in the *Second RCC Order* where, notably, the Commission “agree[d] with commenters who assert that ‘the Commission should refrain from mandating specific performance metrics for covered carriers *or for their intermediate carriers.*’”<sup>22</sup> The Commission also observed that “what constitutes poor rural call completion performance varies according to context,” and pointed out that the Wireline Competition Bureau’s (Bureau) *RCC Data Report* identified several challenges in establishing metrics.<sup>23</sup>

## **V. THE COMMISSION SHOULD SUNSET THE DATA RECORDING AND RETENTION RULES**

Following the *Second RCC Order*’s sensible abandonment of the rural call completion reporting requirements, the *Third FNPRM* seeks comment on elimination of the accompanying recordkeeping and retention rules upon effectiveness of the rules the Commission adopts to implement the RCC Act.<sup>24</sup> ITTA urges the Commission to do so.

As the *Second RCC Order* recounts, the recording, retention, and reporting requirements were intended to improve the Commission’s ability to monitor rural call completion, and to facilitate enforcement action when necessary. Upon conducting a review of the rules, however,

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<sup>20</sup> *See id.* at para. 95. Consistent with notions of privity, *see supra* Section II, an intermediate provider should only be accountable for taking reasonable steps to ensure that any other intermediate provider to which it *directly* transmits a covered voice communication is registered.

<sup>21</sup> *See id.* at para. 94.

<sup>22</sup> *Id.* at 21, para. 41 (emphasis added).

<sup>23</sup> *Id.* (citing *Rural Call Completion*, Report, 32 FCC Rcd 4980, 4990-01, paras. 27-28 (WCB 2017) (*RCC Data Report*)).

<sup>24</sup> *See id.* at 41, para. 109.

the Bureau found that data quality had limited its ability to make use of the collected data.<sup>25</sup> Moreover, in the *Second RCC Order*, the Commission agreed with the Bureau's finding in the *RCC Data Report* that even if the Commission was to retain and modify the recording, retention, and reporting requirements to address the data quality issues, it was not clear that the benefits of such modification would outweigh the costs, or be of any utility to the Commission.<sup>26</sup> Citing Verizon's comments that the Commission "should not force providers to incur a second round of burdens and costs to comply with modified or new recording, retention, and reporting obligations *that likely would be as ineffective as their predecessors*," the Commission stated that, "[f]or these reasons, we also decline to supplement or replace our existing recording and retention rules with any new data collection requirements."<sup>27</sup>

Notwithstanding this assessment by the Commission that the recording and retention rules, along with the reporting requirements, have been "ineffective," the Commission retained the recording and retention rules, albeit "anticipat[ing]" that circumstances would develop such that "the value of the recording and retention rules will diminish."<sup>28</sup> With "ineffective" as the benchmark, it is puzzling to ITTA how the value of the rules could further diminish from there. The only other reason provided in the *Second RCC Order* for retaining the recording and

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<sup>25</sup> See *id.* at 27, paras. 58-59 (citing *RCC Data Report*, 32 FCC Rcd at 4995, para. 38). To illustrate, the Commission declined to require the segregation of autodialer traffic "because covered providers may lack the ability to reliably separate this type of call data," rendering the Bureau "unable to draw firm conclusions' about the impact of including autodialer traffic 'because the data also suggests that there may be significant differences in the way that . . . covered providers [that do segregate their autodialer traffic] categorize their call attempts relative to covered providers overall.' . . . Similar problems exist with the inclusion of intermediate provider and wholesale traffic in the data collection." *Id.* at 27-28, para. 60 n.192 (citing *RCC Data Report*, 32 FCC Rcd at 4992-95, paras. 30, 32-35).

<sup>26</sup> See *id.* at 28, para. 62 (citing *RCC Data Report*, 32 FCC Rcd at 4996, paras. 39-40).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 29, para. 64.

retention rules is that the Commission “cho[]se to proceed incrementally.”<sup>29</sup> This, however, is merely a description of the Commission’s action and provides no real explanation for the Commission’s decision.

In sum, despite acknowledging “the burdens our data collection efforts place on service providers”<sup>30</sup> and the ineffectiveness of such efforts, including the recording and retention requirements, the Commission nevertheless retained those requirements, without providing any cogent or meaningful explanation as to why. At the same time, 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,<sup>31</sup> and the RCC Act’s measures targeting intermediate providers likewise recognize as much. Therefore, the costs and burdens of maintaining the recording and retention requirements are misdirected at covered providers. The Commission already should have relieved covered providers of these burdens. At the very least, it should do so upon effectiveness of the rules to implement the RCC Act.

**VI. THE COMMISSION SHOULD REMOVE ENTIRELY, OR AT A MINIMUM MODIFY CONSIDERABLY, THE COVERED PROVIDER MONITORING REQUIREMENTS IN CONJUNCTION WITH ADOPTING RULES TO IMPLEMENT THE RCC ACT**

Although rural call completion problems persist, there is evidence to suggest that some progress has been achieved in addressing such problems.<sup>32</sup> In addition, in February 2018

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 27, para. 57.

<sup>31</sup> *See supra* Section I.

<sup>32</sup> *See id.* at 5, para. 9. Complaints about rural call completion filed by rural carriers with the Enforcement Bureau continue to decrease year-over-year. While consumer complaints increased from 2016 to 2017 following a decrease the year before, overall they are lower than in 2014. In the experience of ITTA’s members, rural call completion problems have decreased significantly. *See* Comments of ITTA, WC Docket No. 13-39, at 2 (Aug. 28, 2017) (ITTA *Second FNPRM* Comments).

Congress enacted the RCC Act, requiring intermediate providers – most notably, previously unidentified intermediate providers -- to register with the Commission for a publicly available registry, and for the Commission to adopt rules governing their quality of service. Against this backdrop, the *Third FNPRM* seeks comment on whether the Commission should change the covered provider monitoring requirements adopted in the *Second RCC Order* in conjunction with adopting service quality standards for intermediate providers, or whether the Commission should remove the covered provider requirements entirely once the RCC Act is fully implemented.<sup>33</sup> ITTA reiterates that the Commission should abandon the covered provider monitoring requirements altogether,<sup>34</sup> or at least curtail them substantially.

The *Second RCC Order and Third FNPRM* recounts that the primary thrust of proposing monitoring requirements for covered providers was “particularly maintaining the accountability of their intermediate providers in the event of poor performance.”<sup>35</sup> The Commission’s emphasis on the accountability of intermediate providers was well-founded. As the Commission asserted in 2013:

Our experience in investigating and resolving rural call completion complaints suggests that problems with routing calls to rural areas typically arise where more than two intermediate providers are involved in transmitting a call. . . . Moreover, our examination of carrier practices during enforcement proceedings and when responding to complaints has revealed that 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.<sup>36</sup>

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<sup>33</sup> See *Second RCC Order and Third FNPRM* at 41-42, para. 111.

<sup>34</sup> See *id.* (citing ITTA *Second FNPRM* Comments, in which ITTA argued that the Commission should refrain from adopting covered provider monitoring requirements in light of likely imminent enactment of the RCC Act).

<sup>35</sup> See *id.* at 5, para. 8 (quoting *RCC 2<sup>nd</sup> FNPRM*, 32 FCC Rcd at 6052, para. 11).

<sup>36</sup> *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16192, paras. 87-88 (2013).

The RCC Act properly placed the focus of rural call completion troubles on intermediate providers. It will “increase the reliability of intermediate providers by bringing transparency and standards to the intermediate provider market.”<sup>37</sup> The registration requirements especially address the problem of unidentified intermediate providers.<sup>38</sup> Furthermore, as articulated by Representative 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.”<sup>39</sup>

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 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.<sup>40</sup> Even that requirement, however, boils down to Congress’ appropriate recognition that rural call completion breakdowns have been overwhelmingly attributable to heretofore unidentified intermediate providers.

The RCC Act requires that the Commission adopt service quality standards applicable to intermediate providers. As discussed above,<sup>41</sup> many of the service quality standards on which

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<sup>37</sup> S. Rep. No. 115-6, at 2-3 (2017).

<sup>38</sup> These requirements represent “commonsense improvements . . . to bring these intermediate providers out from the shadows and into the light so that we can hold them accountable to the consuming public.” 163 Cong. Rec. H584 (daily ed. Jan. 23, 2017) (statement of Rep. Leonard Lance). “For the most part, consumers are unaware of these intermediate providers, which has allowed them to be held unaccountable.” *Id.*

<sup>39</sup> 163 Cong. Rec. H585 (daily ed. Jan. 23, 2017) (statement of Rep. David Young).

<sup>40</sup> *See* 47 U.S.C. § 262(b).

<sup>41</sup> *See supra* Section IV.

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. 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.

The *Third FNPRM* 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.”<sup>42</sup> The RCC Act provides the answer in how it allocates responsibility between covered providers and intermediate providers. By directly addressing intermediate providers rather than circuitously addressing them via increased monitoring burdens on covered providers, the 2017 RCC Act’s provisions, unlike the rules adopted in the *Second RCC Order*, are properly focused.

Thereby rendering the covered provider monitoring requirements superfluous is not merely a semantic matter. Contrary to the *Second RCC Order*’s repeated claims that the covered provider monitoring requirements somehow reduce the overall burden of the rural call completion rules on providers,<sup>43</sup> they are considerably more burdensome, entailing, for instance, a massive contract renegotiation effort within only six months. The monitoring requirements are also draconian in the scope of accountability and potential exposure they foist upon covered

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<sup>42</sup> *Second RCC Order and Third FNPRM* at 36-37, para. 90.

<sup>43</sup> *See, e.g., id.* at 6, para. 11.

providers for the activities of downstream intermediate providers that covered providers may not be aware of.<sup>44</sup>

For all of the foregoing reasons, the Commission should remove the covered provider monitoring requirements entirely.<sup>45</sup> The RCC Act properly allocates the responsibilities for completion of calls between covered providers and intermediate providers.<sup>46</sup> To the extent there would be slightly more than a four-month gap between when the covered provider monitoring requirements would otherwise go into effect<sup>47</sup> and the February 26, 2019 deadline for the Commission to promulgate service quality rules applicable to intermediate providers,<sup>48</sup> there is

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<sup>44</sup> See *id.* at 17-18, paras. 34-35; see also *supra* Section II. (discussing the significant possibility that a covered provider may not be able to identify, let alone confirm registration of, every intermediate provider in a given call path).

<sup>45</sup> This position is not mutually exclusive with the position that the Commission should adopt service quality standards applicable to intermediate providers that are consistent with the monitoring requirements applied to covered providers in the *Second RCC Order*. See *supra* Section IV. 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, with reasonable modifications. See, e.g., *infra* at 14-15.

<sup>46</sup> The Commission acknowledges that it revised subsection (b) from its proposal in the *RCC 2<sup>nd</sup> 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 *RCC 2<sup>nd</sup> 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.

<sup>47</sup> Because June 11, 2018 will mark the first business day following 30 days after publication of a summary of the *Second RCC Order* in the Federal Register, see Federal Communications Commission, Rural Call Completion, 83 Fed. Reg. 21723 (May 10, 2018), the monitoring requirements would go into effect on October 17, 2018 in the absence of prior Commission action to remove or stay the requirements. See *Second RCC Order* at 25, para. 50.

<sup>48</sup> See 47 U.S.C. § 267(c)(1)(B) (requiring Commission to promulgate service quality standards not later than 1 year after enactment of the RCC Act, which occurred February 26, 2018).

no sense in waiting until “the RCC Act is fully implemented”<sup>49</sup> before removing the covered provider monitoring requirements, because the burdens of having carriers implement them for four months would exponentially eclipse any benefit of their being in place for that period.<sup>50</sup> As Commissioner O’Rielly commented on the *Second RCC Order*, “[w]e may have been wise to see the impact of the new law before considering broader changes to our rules.”<sup>51</sup> It is not too late for the Commission to heed this call and steer towards that wiser path.

Finally, in the absence of removing the covered provider monitoring requirements altogether, the Commission at least should modify them substantially. For instance, while not requiring direct covered provider monitoring of the entire call chain, the Commission does require, in lieu of direct monitoring beyond the intermediate provider with which the covered provider contracts, restrictions in such contracts that “ensure quality call completion” and “ensure [contractual] restrictions flow down the entire intermediate provider call path.”<sup>52</sup> Moreover, “a covered provider may not avoid liability . . . by claiming solely that its contracts with initial downstream vendors prohibited unlawful conduct.”<sup>53</sup> The Commission maintains that these provisions are not unduly burdensome,<sup>54</sup> but the reality is that they render covered providers guarantors of the performance of the entire call path. While claiming credit for

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<sup>49</sup> *Second RCC Order and Third FNPRM* at 41-42, para. 111.

<sup>50</sup> In addition to renegotiating numerous contracts, covered providers would need to develop written protocols and procedures to implement the monitoring requirements, and then ensure these measures are in place by mid-October 2018, among other implementation tasks. Not only would that require redirection of considerable financial and personnel resources to accomplish those tasks within that time frame, it would also be wasteful if the underlying requirements were vacated within a few months.

<sup>51</sup> *Id.* at 77, Statement of Commissioner Michael O’Rielly.

<sup>52</sup> *Id.* at 17-18, para. 34.

<sup>53</sup> *Id.* at 18, para. 34.

<sup>54</sup> *See, e.g., id.* at para. 35.



“address[ing] the underlying problem of diffuse responsibility” over the call path,<sup>55</sup> instead these provisions contravene the RCC Act’s paradigm for allocating such responsibility. At a minimum, in the event the Commission misguidedly retains the covered provider monitoring requirements, it should modify them to significantly curtail the language regarding what covered providers “must ensure,” and hew much more closely to the statutory scheme embodied in the RCC Act for allotting relative call completion responsibilities between the covered provider and intermediate providers in the same call path.

## **VII. 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 allot the responsibilities 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, the Commission should vacate the covered provider monitoring requirements, or at a minimum modify them substantially. In addition, 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 or

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<sup>55</sup> *Id.* at 12, para. 22.

any upstream intermediate provider with unduly burdensome obligations to guarantee the performance of any provider further downstream in the call chain.

Respectfully submitted,

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June 4, 2018