

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

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

ITTA – The Voice of America’s Broadband Providers (ITTA) hereby submits these comments in support of the petition filed by USTelecom seeking stay of the covered provider monitoring requirements adopted in the Commission’s *Second RCC Order* in the proceeding.¹ As discussed below, the same factors meriting grant of USTelecom’s petition warrant stay of these requirements until the Commission removes the covered provider monitoring requirements entirely, or until it modifies them considerably in conjunction with adopting rules governing intermediate providers in response to the *Third NPRM*, and both the modified monitoring requirements and the rules governing intermediate providers become effective.

I. BACKGROUND

As discussed in ITTA’s comments on the *Third FNPRM*, the RCC Act² properly places the focus of rural call completion troubles on unidentified intermediate providers.³ It strives to address these problems through registration requirements geared towards flushing intermediate

¹ Petition of USTelecom for Stay, WC Docket No. 13-39 (filed June 11, 2018) (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 Improving Rural Call Quality and Reliability Act of 2017, Pub. L. No. 115-129 (2018) (RCC Act).

³ See Comments of ITTA, WC Docket No. 13-39, at 1, 10-11 (June 4, 2018) (ITTA *Third FNPRM* Comments).

providers out and by subjecting intermediate providers to enforceable service quality standards.⁴ Subsequent to enactment of the RCC Act, the Commission adopted covered provider monitoring requirements in the *Second RCC Order*.

With the Commission statutorily required to implement service quality standards for intermediate providers, the onerous covered provider monitoring requirements 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.”⁵ 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 Act⁶ is that the covered provider must “ensure” only that the first intermediate provider in the call path is registered.⁷ 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

⁴ *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”).

⁵ *Second RCC Order and Third FNPRM* at 36-37, para. 90.

⁶ 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).”).

⁷ See ITTA *Third FNPRM* Comments at 3-4. In its comments, ITTA emphasized that 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. *Id.* at 2. ITTA’s advocated interpretation of Section 262(b) is consistent with this theme, as well as with the principles of privity the Commission applied in setting forth the covered provider monitoring requirements in the *Second RCC Order*. See *id.* at 3-4.

responsibility beyond that handoff is redundant. In light of this statutory paradigm, ITTA reiterated that the Commission should abandon the covered provider monitoring requirements altogether, or at least curtail them substantially.⁸

II. DISCUSSION

A. Stay of the Covered Provider Monitoring Requirements is Warranted

As USTelecom recounts, the Commission and the courts apply a four-factor test in evaluating the merits of a stay petition. A petitioner need not satisfy all four factors, and the Commission has substantial discretion in staying requirements where doing so is equitable and in the public interest.⁹ USTelecom contends that the second, third, and fourth factors of the test are met. While ITTA also believes that ITTA's comments on the *Third FNPRM* make a strong showing that 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,¹⁰ and thereby satisfy the first factor, ITTA concurs that the other three factors of the test are met here.

ITTA agrees with USTelecom that covered providers will be irreparably injured absent grant of the requested stay.¹¹ As USTelecom indicates, the six-month transition period established by the Commission for covered providers to renegotiate contracts with intermediate providers already recognizes the substantial effort that will be entailed to comply with the monitoring requirements, and these contracts cannot be renegotiated or amended until all parties in the call chain have an understanding of the service quality standards to which intermediate

⁸ See, e.g., *id.* at 10.

⁹ See Petition at 2-3 (citations omitted).

¹⁰ See ITTA *Third FNPRM* Comments at 9-15.

¹¹ See Petition at 3-5. This is the second factor of the four-factor test.

providers will be subject.¹² 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. This would require redirection of considerable financial and personnel resources to accomplish those tasks within that time frame.¹³ Therefore, 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.”¹⁴

Furthermore, as ITTA argues in its comments on the *Third FNPRM*, 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.¹⁵ And, of course, if the Commission eliminates the covered provider monitoring requirements entirely, as it should, any efforts expended by covered providers towards implementing the requirements are a complete waste. In the face of all these considerations, failure to grant the requested stay would inevitably lead to the irreparable injury

¹² *See id.* at 4.

¹³ *See ITTA Third FNPRM Comments* at 14 n.50.

¹⁴ *Petition* at 4-5.

¹⁵ *ITTA Third FNPRM Comments* at 5.

of extensive yet frivolous efforts to come into compliance with requirements that are bound to shift shortly after they become effective.

ITTA also agrees with USTelecom that a stay will not harm any party in this proceeding.¹⁶ As USTelecom suggests, if the Commission, as it should, subjects intermediate providers to the same set of monitoring requirements to which covered providers are under the *Second RCC Order*, there will be no gaps in responsibility over the call path.¹⁷ In addition, as ITTA asserted in its comments on the *Third FNPRM*, to the extent there would be slightly more than a four-month lag between when the covered provider monitoring requirements would otherwise go into effect¹⁸ and the February 26, 2019 deadline for the Commission to promulgate service quality rules applicable to intermediate providers,¹⁹ the burdens of having carriers implement them for four months would exponentially eclipse any benefit of their being in place for that period.²⁰ In this regard, not only would a stay avert harm to parties in the proceeding, it would actually benefit them significantly by promoting administrative efficiency.²¹

Finally, ITTA agrees with USTelecom that the balance of the public interest strongly favors a stay.²² As USTelecom highlights, forcing carriers unnecessarily to incur compliance

¹⁶ See Petition at 5. This is the third factor of the four-factor test.

¹⁷ See *id.*

¹⁸ 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.

¹⁹ 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).

²⁰ ITTA *Third FNPRM* Comments at 13-14.

²¹ See Petition at 5.

²² See *id.* at 6. This is the fourth factor of the four-factor test.

costs will lead to consumer harm via inevitably increased rates.²³ The Commission consistently has sought to prevent harms that otherwise arise as the result of superfluous regulatory compliance costs. For instance, the Commission recently found that “[e]liminating unnecessary costs and burdens having scant apparent countervailing benefits . . . frees up carrier resources to devote to” other important carrier endeavors, such as a more rapid and efficient transition to next-generation networks and services.²⁴ Grant of the requested stay is in the public interest insofar as it avoids unnecessary compliance costs which instead may be parlayed into consumer benefits.

B. Duration of the Stay

USTelecom seeks a stay of the covered provider monitoring requirements until the effective date of rules governing intermediate providers adopted in response to the *Third FNPRM*.²⁵ ITTA supports these contours for the length of the stay in the event the Commission misguidedly retains the covered provider monitoring requirements. If the Commission does so, the stay should endure until the Commission modifies the covered provider monitoring requirements considerably in conjunction with adopting rules governing intermediate providers in response to the *Third NPRM*, and both the modified monitoring requirements and the rules governing intermediate providers become effective.²⁶ If, however, the Commission – as it

²³ *See id.*

²⁴ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Second Report and Order, FCC 18-74 at 13, para. 28 (June 8, 2018). *See also, e.g., Business Data Services in an Internet Protocol Environment*, Report and Order, 32 FCC Rcd 3459, 3642, Appx. C, para. 66 (2017), *appeal docketed sub nom. AT&T, Inc. v. FCC*, Nos. 17-2296, 17-2342, 17-2344 and 17-2685 (8th Cir. June 12, 2017) (“unnecessary regulation exacts administrative compliance costs on carriers that reduce capital available for building new networks and infrastructure, inhibiting competitive entry and deployment”).

²⁵ *See* Petition at 2.

²⁶ 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

(continued...)

should – eviscerates the covered provider monitoring requirements entirely, the stay should remain in effect until the Commission removes the covered provider monitoring requirements.

III. CONCLUSION

For the foregoing reasons, grant of a stay, as requested by USTelecom, is warranted. Doing so will avoid the harms of covered providers unnecessarily devoting substantial personnel and financial resources towards implementation of requirements that should be vacated, or at least substantially modified. At the same time, no party will be harmed by issuance of the stay, and a stay is in the public interest. If the Commission, as it should, eliminates the covered provider monitoring requirements altogether, the stay should remain in effect until the Commission removes the covered provider monitoring requirements.

Respectfully submitted,

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remove the covered provider requirements entirely once the RCC Act is fully implemented. *See Second RCC Order and Third FNPRM* at 41-42, para. 111.