

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of an Investigation)	
Into Call Routing and Call Completion)	Case No. TW-2012-0112
Problems in the State of Missouri)	

**COMMENTS OF THE MISSOURI CABLE TELECOMMUNICATIONS
ASSOCIATION**

Comes now the Missouri Cable Telecommunications Association (the “MCTA”) and responds to the issues set forth for comment in the Order Offering an Opportunity to Respond to Staff’s Report Regarding Its Investigation Into Call Routing and Call Completion Problems in the State of Missouri (the “Order”), which was issued on April 5, 2013. The issues identified in the Order are the same as those set forth in the Status Report and Recommendation for Comment Period, dated March 29, 2013 (the “Staff Report”).¹ The MCTA, whose members² provide more than 1.5 million customers in Missouri with broadband service, voice-over-Internet Protocol (“VoIP”) service and/or multichannel video service, is committed to working with the Missouri Public Service Commission (the “Commission” or “MoPSC”) regarding the issues in this proceeding and to continuing to provide quality voice communications to residential and business consumers in the state.

Summary

The Federal Communications Commission (the “FCC”) and the telecommunications industry are actively committed to resolving call completion issues, including with respect to those practices described in the Staff Report that apparently are motivated by the significantly higher terminating

¹ Those issues form the headings of sections I through IV of these Comments.

² The member companies of the MCTA are Charter, Time WarnerCable, Mediacom, Suddenlink, Comcast, Cable One, NewWave, Cable America, SEMO Communications and City Cable).

switched access charges of rural local exchange carriers.³ While it is necessary to address call completion issues on a comprehensive national basis, the Commission already has sufficient existing authority, subject to certain jurisdictional constraints discussed below, to require certification of intermediate providers⁴ and to engage in enforcement actions to address call termination issues as they arise. The MCTA believes such authority may be exercised in appropriate cases as they arise.

I. Staff's Conclusions and Observations

The Staff Report describes the active, ongoing role of the FCC and telecommunications industry in investigating the causes and effects of call completion issues and addressing these issues on a comprehensive national basis, including through the FCC's current rulemaking proceeding. While Staff concludes that the "solution being proposed" by the FCC in its current rulemaking proceeding is "unlikely [to] address the root causes of call completion problems in Missouri,"⁵ the MCTA nevertheless believes that the FCC's and industry's efforts merit further consideration and, to a certain extent, deference. To the extent the desire to avoid high termination fees in rural areas has motivated the practices leading to call termination problems – and Staff does not appear to fundamentally disagree with the FCC's conclusions in such regard – the FCC's intercarrier compensation reforms already have reduced and, in the near future, should eliminate such incentives. The FCC's framework for reducing and ultimately phasing out interstate and intrastate terminating access charges was established by the *Universal Service and Intercarrier Compensation*

³ *In the Matter of Developing an Unified Intercarrier Compensation Regime; Establishing Just and Reasonable rates for Local Exchange Carriers*, CC Docket No. 01-92, WC Docket No. 07-135, Declaratory Ruling, DA 12-154 (rel. Feb. 6, 2012) (the "*Declaratory Ruling*"), para. 7 ("Call completion problems appear to be occurring particularly in rural areas served by rate-of-return carriers where the costs that long distance providers incur to complete calls are generally higher than in non-rural areas").

⁴ The FCC defines "intermediate provider" as "any entity that carries or processes traffic that traverses or will traverse the PSTN at any point insofar as that entity neither originates nor terminates that traffic." See 47 C.F.R. § 64.1600(f).

⁵ Staff Report, p. 7.

Transformation Order, released in November 2011.⁶ By July 2012, all carriers, including rural incumbent local exchange carriers in Missouri, had reduced by half the difference between their intrastate terminating switched access rates and their interstate terminating switched access rates. By July 1, 2013, the intrastate terminating switched access rates that reportedly have motivated the practices leading to call completion issues will be reduced to parity with interstate terminating switched access rates. The incentives for altering calling party numbers and “re-originating” calls in order to disguise traffic as interstate⁷ will be significantly reduced as interstate and intrastate termination rates are unified on July 1, 2013 and trend down to bill and keep, at which point such incentives will be eliminated.

In the *Universal Service and Intercarrier Compensation Transformation Order* the FCC also directly addressed practices relating to call completion issues. The FCC prohibited call blocking with respect to all types of traffic and adopted rules barring carriers and VoIP service providers from altering call signaling information, including calling number information. These rules direct that signaling information reaches terminating carriers and provides accurate caller identification for call recipients.

In February 2012, the Federal Communications Commission (the “FCC”) released its *Declaratory Ruling*, reiterating:

the [FCC’s] longstanding prohibition on carriers blocking, choking, reducing or otherwise restricting traffic. Furthermore, we clarify that this prohibition extends to the routing practices described in greater detail below that have the effect of blocking, choking, reducing, or otherwise restricting traffic.”⁸

⁶ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform -- Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011).

⁷ See Staff Report, p. 7.

⁸ *Declaratory Ruling*, *supra*, para. 3 (footnote omitted).

The FCC further stated that such prohibited routing practices would lead to enforcement proceedings pursuant to 47 U.S.C. § 201 (unjust and unreasonable practices), 47 U.S.C § 202 (unjust or unreasonable discrimination in practices, facilities, or services) and 47 U.S.C. § 217 (carriers' responsibility for agents' and employees' actions performed within the scope of their employment).⁹ The FCC has demonstrated its commitment to using its enforcement powers to address call completion programs, as evidenced in its March 2013 Consent Decree with Level 3 Communications, LLC. That Consent Decree resolved the Enforcement Bureau's investigation into violations of sections 201(b) and 202(a) with respect to Level 3's call completion practices to rural areas, including Level 3's use and monitoring of intermediate providers.¹⁰

In addition, the FCC is presently engaged in its *Rural Call Completion* rulemaking proceeding to ensure adequate call completion.¹¹ The proposed rules would require facilities-based originating long-distance voice service providers – *i.e.*, local exchange carriers, interexchange carriers, commercial mobile radio service providers and interconnected VoIP service providers – to collect data on call answer rates, including completion rates, and to periodically report such data to the FCC. If the originating long-distance voice service provider is not facilities-based, the FCC proposes to apply the same obligations to the first facilities-based provider in the call-delivery chain.¹² The FCC also has proposed a rule that would prohibit both originating providers and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted.¹³ The “false audible ringing” problem is

⁹ *Id.*, para. 4. *See id.*, para. 16 (list of specific enforcement activities authorized by the FCC).

¹⁰ *In the Matter of Level 3 Communications, LLC*, File No.: EB-12-IH-0087, Acct. No.: 201332080014 FRN: 0017585993, Order, DA 13-71 (rel. March 12, 2013). *See* Staff Report, pp. 8-9.

¹¹ *Rural Call Completion*, WC Docket No. 13-39, Notice of Proposed Rulemaking, 28 FCC Rcd 1569 (2013).

¹² *Id.* para. 17.

¹³ *Rural Call Completion*, *supra*, paras. 3, 13 and 14.

the same issue the Staff Report discusses at length. Initial and reply comments are due regarding the FCC's proposed rules on or before May 13, 2013 and May 28, 2013, respectively.

In addition to conducting ongoing investigations of several long-distance providers, the FCC is also addressing daily operational problems reported by rural customers and carriers so that incoming long-distance calling to rural telephone company customers is promptly restored. The FCC has established "dedicated avenues" for rural customers and carriers to inform it about call completion problems. The web-based complaint intake process established by the FCC focuses on the rural call completion problems of residential and business customers, instructs them on how to file complaints with the FCC, and links to the FCC's standard complaint form. A dedicated email intake process established by the FCC has expedited the ability of rural telephone companies to alert the FCC of problems receiving calls from a particular originating long-distance provider and facilitates provider-to-provider resolution.¹⁴

Because of the complex and predominantly interstate nature of the traffic that is subject to call completion issues, there also are efforts ongoing at the national level by carriers to mitigate the issues underlying the reported call completion problems. In September 2011, the FCC established the Rural Call Completion Task Force to address call termination issues.¹⁵ The task force has facilitated interactions between the FCC, other federal agencies and the industry. Such efforts have involved the Alliance for Telecommunications Industry Solutions ("ATIS"), which through its Next Generation Interconnection Interoperability Forum ("NGIIF") has actively worked with NECA, state utility commissions and carrier representatives to address rural long distance call termination. On August 16, 2012, ATIS - NGIIF completed standards and best practices for call handling and

¹⁴ *Id.*, para. 11.

¹⁵ *See Declaratory Ruling, supra*, para. 5, note 12.

completion, which are expected to address call termination concerns.¹⁶ On September 4, 2012, ATIS announced publication of the Intercarrier Call Completion/Call Termination Handbook, which provides:

guidance to help telecommunications providers mitigate problems being encountered by some rural telephone company customers in receiving long-distance calls. The Handbook includes new and existing industry standards to help ensure call completion. It also offers best practices for addressing call termination problems, especially related to management of intermediate or underlying carriers.¹⁷

The NGIIF also has expanded its Service Provider Contact Directory to include interexchange carrier-to-carrier contact information, which may be used to report problems related to call completion issues between carriers.¹⁸ NGIIF continues to collaborate with rural carrier associations to develop methods and procedures for conducting tests of call completions.¹⁹

Several conclusions emerge from the FCC's and industry's involvement with call completion issues. First, given the FCC's comprehensive intercarrier compensation reform, as well as the scope of the call completion problem and its focus on long distance calls, call termination issues generally must be addressed from a national policy perspective. Second, given the interconnected character of communications networks, it is possible that requirements imposed by a single state to address call completion issues could complicate the ability of carriers to efficiently manage networks, which have been engineered to effectively handle both interstate and intrastate traffic. Third, and notwithstanding the foregoing, the Commission can supplement the FCC's and industry's efforts by investigating call completion problems and, if necessary, requiring certification of intermediate telecommunications service providers and otherwise exercising enforcement authority. In such

¹⁶ See <http://www.atis.org/ngiif/Issue029.asp>.

¹⁷ <http://www.atis.org/PRESS/pressreleases2012/090412.html>. See <http://www.atis.org/ngiif/Issue034.asp> (update of Handbook dated March 29, 2013).

¹⁸ See http://www.atis.org/legal/Docs/MISC/ATIS_ExParte053112.pdf.

¹⁹ *Id.* See <http://www.atis.org/PRESS/pressreleases2012/090412.html>.

respects, the Staff Report apparently concluded that the same “least-cost routing” company may have been engaged in many of the call completion issues involving Grand River Mutual Telephone Company (“Grand River”).²⁰ Although Staff also concluded that “the identity of the least-cost router(s) remains unknown because only the originating IXC or I-VoIP provider can disclose the company with whom it has contracted,”²¹ the Commission has authority to request such information from the originating telecommunications service providers and, as discussed in further detail below, to undertake appropriate action when Missouri statutes and Commission rules have been violated.

II. Staff Counsel’s Legal Analysis that Intermediate Providers (Least-Cost-Routers) Must Be Certificated or Registered with the MoPSC

The MCTA agrees with Staff’s conclusion that the Commission has jurisdiction to require certification of a telecommunications company that is an intermediate provider of telecommunications services in Missouri.²²

III. Whether the MoPSC Has Sufficient Authority to Adequately Address Call Completion Problems

The MCTA agrees with Staff’s conclusion that the Commission, pursuant to Section 392.200, RSMo Supp. 2012, has authority to engage in enforcement actions against intermediate providers of telecommunications services.²³ Section 392.200.3 prohibits “subject[ing] any particular person, corporation, or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever except that telecommunications messages may be classified into such classes as are just and reasonable ” Section 392.200.6 requires telecommunications companies operating in

²⁰ The Staff Report states, at p. 9:

The twelve-month examination of Grand River toll traffic revealed the possibility that different IXCs (i.e. “interexchange carriers” or long-distance companies) may be using the same least-cost routing company.

²¹ *Id.*

²² See Call Gapping Telecommunications Workshop Staff Counsel’s Legal Analysis, Cully Dale, November 7, 2011, p. 3.

²³ See *id.* at pp. 2-3.

Missouri to “receive, transmit and deliver, without discrimination or delay, the conversations and messages of every other telecommunications company with whose facilities a connection may have been made.” Under authority of sections 386.040, RSMo 2000 and 386.250, RSMo 2000, the Commission has adopted the Enhanced Record Exchange Rules (the “ERE Rules”), 4 CSR 240-29.010 *et seq.*, which may apply to some of the activities described in the Staff Report. The Commission has enforced the ERE Rules for reported failures to pay applicable access rates for terminating interexchange traffic and interMTA wireless originated traffic, failures to deliver originating caller identification, and transmittal of interLATA wireline traffic over the “LEC to LEC” network. *See Halo Wireless, Inc. v. Craw-Kan Telephone Cooperative, Inc.*, File No. TC-2012-0331, 2012 WL 3544982 (Mo.P.S.C. Aug. 1, 2012). *See also MoPSC Staff, Complainant, v. Halo Wireless, Inc. and Transcom Enhanced Services, Inc.*, Case No. TC-2013-0194. Therefore, it is apparent that the Commission can and will use its investigative and enforcement authority.

However, the Commission’s enforcement authority and, indeed, its jurisdictional reach are subject to several legal constraints.

First, the Commission’s jurisdiction is limited to intrastate telecommunications services. Section 392.190, RSMo 2000 provides that the provisions of section 392.200 “apply to telecommunications service between one point and another within the state of Missouri and to every telecommunications company.” (Emphasis added.) Section 386.020(52), RSMo Supp. 2012 defines “telecommunications company” as a person “owning, operating, controlling or managing any facilities used to provide telecommunications service for hire, sale or resale within this state.” (Emphasis added.) The authority of the Commission regarding certification, including revocation pursuant to section 392.220.6, is thus constrained to violations of intrastate telecommunications service authority.

Similarly, section 386.250(2) provides that the jurisdiction of the Commission with respect to its authority to impose penalties is limited to intrastate telecommunications service:

To all telecommunications facilities, telecommunications services and to all telecommunications companies so far as such telecommunications facilities are operated or utilized by a telecommunications company to offer or provide telecommunications service between one point and another within this state or so far as such telecommunications services are offered or provided by a telecommunications company between one point and another within this state, except that nothing contained in this section shall be construed as conferring jurisdiction upon the commission over the rates charged by a telephone cooperative for providing telecommunications service within an exchange or within a local calling scope as determined by the commission, except for exchange access service.

(Emphasis added.)²⁴

Second, the Commission's jurisdiction concerning interconnected VoIP services is limited to those actions authorized under section 392.550, RSMo Supp. 2012. The authority of the Commission as elsewhere set forth in Chapters 386 and 392 pertains to "telecommunications services." As defined by section 386.020(54)(j), the term "telecommunications services" does not include interconnected VoIP. While section 392.550.2 subjects interconnected VoIP service to "appropriate exchange access charges to the same extent that telecommunications services are subject to such charges" and section 392.550.4(5) confers authority to "hear and resolve complaints under sections 386.390 and 386.400 regarding the payment or nonpayment for exchange access services," interconnected VoIP service providers are not obligated to provide VoIP services on a non-discriminatory basis and are not subject to section 392.200 or to other statutes in Chapters 386 and 392 as referenced by Staff.

²⁴ In addition, section 386.030, RSMo 2000 states the following:

Neither this chapter, nor any provision of this chapter, except when specifically so stated, shall apply to or be construed to apply to commerce with foreign nations or commerce among the several states of this union, except insofar as the same may be permitted under the provisions of the Constitution of the United States and the acts of Congress.

Third, the Commission's authority to assess penalties based on the actions of persons working with or on behalf of regulated entities is limited to the actions of officers, employees and agents acting within the scope of their employment. Section 386.570.3, RSMo 2000 states:

In construing and enforcing the provisions of this chapter relating to penalties, the act, omission or failure of any officer, agent or employee of any corporation, person or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission or failure of such corporation, person or public utility.

The Missouri appellate courts have concluded that “[a]n agency relationship requires authority of the agent to bind the principal. If an agent has authority to act, the principal will be bound by contracts the agent enters into on behalf of the principal.” *Teasdale & Associates v. Richmond Heights Church Of God In Christ*, 373 S.W.3d 17, 22 (Mo. App. E.D. 2012). In the absence of an agent's authority to bind the principal, no agency relationship exists. In a given case, a contract with an intermediate provider of telecommunications service may go so far as to require calls to be completed, prohibit alteration of calling party numbers or other signaling parameters, and require the intermediate provider to comply with all applicable laws. Intermediate providers, however, are not necessarily the agents or employees of certificated telecommunications service providers, and certificated telecommunications service providers cannot “ensure” the actions of every carrier in the transmission chain of a particular call.

Moreover, the ability to control the actions of others through contracts is constrained by the contractual terms themselves, the existence of which depends on the commercial bargaining power of the parties. In addition, contracts cannot be unilaterally modified and, in many instances, cannot be easily terminated for conduct in breach of an agreement. Even the best-drafted contract cannot govern the actions of remote entities. Moreover, intermediate providers may not be in privity of contract with the originating interexchange telecommunications service provider. Although a carrier

may contract with one or more underlying carriers to route traffic on its behalf, underlying carriers may utilize the services of one or more third-tier carriers. Such third tier carriers may then arrange with other carriers for the continued transmission of traffic to its ultimate hand-off to a terminating carrier. Liability cannot be imposed on a certificated provider for the actions of third-tier or remote carriers that might route a portion of the certificated carrier's traffic. The Commission, however, is not prevented from identifying and requiring the certification of remote telecommunications service providers or from imposing penalties or undertaking other enforcement actions within its jurisdiction regarding such entities.

IV. Whether the Parties Believe Sufficient Root Cause Analysis Has Been Completed

The Staff has made tremendous strides in this investigation, particularly in analyzing and demonstrating Grand River's call completion issues. The MCTA suggests that the Commission pursue the collection of information from the originating telecommunications service providers identified in the Grand River study and undertake appropriate action within the jurisdiction conferred by Missouri law.

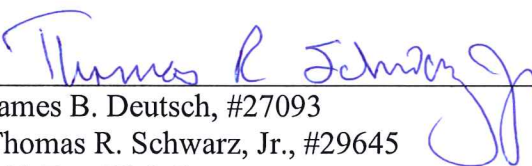
Conclusion

The MCTA appreciates the opportunity to assist the Commission in assessing the conclusions set forth in the Staff Report and the nature and extent of the Commission's authority to address call routing and call completion issues. As stated herein, the MCTA supports the effort to identify and address these issues in Missouri consistent with the ongoing national efforts of the FCC and telecommunications industry.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above pleading was sent electronic mail this 3rd day of May, 2013, to:

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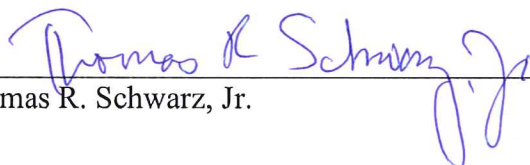
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