



Federal Communications Commission  
Office of Legislative Affairs  
Washington, D.C. 20554

Office of the Director

September 5, 2014

The Honorable John Thune  
Ranking Member  
Committee on Commerce, Science and Transportation  
United States Senate  
560 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Senator Thune:

Enclosed please find the responses of Travis LeBlanc, Acting Chief of the Federal Communications Commission's Enforcement Bureau, to the Questions for the Record regarding his testimony before the Committee on Commerce, Science, and Transportation at its July 30, 2014, hearing entitled, "Cramming on Wireless Phone Bills: A Review of Consumer Protection Practices and Gaps."

If I can be of further assistance, please have your staff contact me at (202) 418-0095.

Sincerely,

A handwritten signature in blue ink that reads "Sara W. Morris".

Sara W. Morris

Enclosure

**Responses to Questions for the Record of  
Travis LeBlanc, Acting Chief, FCC Enforcement Bureau  
July 30, 2014 Hearing on “Cramming on Wireless Phone Bills:  
A Review of Consumer Protection Practices and Gaps”**

**Question 1:** Do you believe the exemption from the FTC’s jurisdiction for communications common carriers frustrates effective consumer protection with regard to billing practices in the telecommunications industry? Please explain your answer.

**Answer:** I do not believe that the exemption from the FTC’s jurisdiction for communications carriers frustrates effective consumer protection with regard to billing practices in the telecommunications industry. Over the years, the FCC has taken many enforcement actions to protect consumers from deceptive billing practices in the telecommunications industry. These actions have proposed forfeiture penalties, as well as required carriers to redress injured consumers and adopt rigorous compliance plans. The FCC has also adopted truth-in-billing rules to protect consumers from deceptive billing practices, and initiated a proceeding that considers the expansion of existing protections for consumers. The FCC expects to conclude this proceeding in the next several months. As a result, the exemption from the FTC’s jurisdiction for common carriers does not frustrate effective consumer protection because the FCC is acting to protect consumers of telecommunications services.

**Question 2:** Do you believe the communications common carrier exemption is outdated or should be repealed? Please explain your answer.

**Answer:** I do not believe that the communications common carrier exemption is outdated or should be repealed. The FCC is the federal agency with the expertise and experience to serve as the primary regulatory and enforcement oversight authority for the nation’s telecommunications carriers. For decades, the FCC has exercised this authority through a combination of regulation, enforcement, and consumer education. The regulations that the FCC has adopted continue to protect consumers while also ensuring that all the people of the United States have rapid, efficient, and nationwide communications services with adequate facilities at reasonable charges. While the portfolio of enforcement actions that the Commission takes have evolved over time with changes in technology and industry practices, the Commission and the Enforcement Bureau are fully committed to ensuring that the Communications Act as well as the FCC’s rules and regulations are efficiently and effectively enforced to protect American consumers in the 21<sup>st</sup> Century.

**Question 3:** Do you believe the FCC should remain the agency with primary jurisdiction over the telecommunications industry?

**Answer:** Yes.

**Question 3a:** Would repealing the communications common carrier exemption alter the jurisdiction of the FCC? Please explain your answer.



**Answer:** I do not believe that the communications common carrier exemption should be repealed. That being said, the FCC's jurisdiction is not tied to the FTC Act. As a result, repealing the common carrier exemption in the FTC Act would not alter the FCC's jurisdiction. However, granting another federal agency jurisdiction over the activities of common carriers increases the risk of inconsistent actions by the agencies as well as inconsistent requirements for regulatees.

**Question 4:** Does the communications common carrier exemption need to be repealed or modified in order to better enable the FCC and the FTC to work together to protect consumers of telecommunication services? Please explain your answer.

**Answer:** No. It is not necessary to modify or repeal the common carrier exemption in the FTC Act in order to better enable the FCC and the FTC to work together to protect consumers of telecommunications services. The FCC and the FTC regularly collaborate and cooperate to protect consumers. For example, as discussed at the hearing, the FCC and the FTC coordinated our enforcement activities with respect to T-Mobile's alleged cramming via premium short messaging services. Our two agencies worked collaboratively on that investigation in order to harmonize our respective enforcement as well as to leverage our respective expertise. As other examples of our effective working relationship, the FCC has taken enforcement action against prepaid card providers for deceptive marketing based on FTC referrals; we have participated in each other's workshops on areas of mutual interest; and the agencies meet and confer routinely on Do-Not-Call and robocall enforcement. We at the FCC are pleased with our collaborations with the FTC and look forward to continuing to partner with the FTC in the future.

**Question 5:** As you know, call completion is a significant problem in rural America. To date, however, only three companies have reached agreement on consent decrees to address the issues, and persistent problems continue. Why has the Commission not taken more forceful and wide-spread enforcement action in this area?

**Answer:** I agree that rural call completion has been a significant problem; it can interfere with an individual's ability to communicate with family and friends, seek help in an emergency, and conduct important business. As a result of the Commission's investigations, Level 3, Windstream, and Matrix made substantial payments to the U.S. Treasury and agreed to institute comprehensive compliance plans designed to ensure future compliance with the Commission's rules. These investigations also informed the Commission's rural call completion rulemaking, which resulted in the adoption of the new rules that require providers to record, retain, and report to the Commission call completion data for long distance calls. When these rules go into effect, the data that providers file should highlight which providers have unacceptably low call completion rates and facilitate the Commission's ability to take additional enforcement action on an ongoing basis. In addition, the data collection should deter call completion problems by informing providers about their own performance, as well as the performance of each of their intermediate providers.

**Question 6:** The Commission adopted record keeping and reporting requirements in the Fall of 2013 to address the call completion issue, but the rules have not been implemented. To the



extent investigative efforts are hampered by the lack of records, why have the rules not yet gone into effect—nine months after they were adopted?

**Answer:** Pursuant to the Paperwork Reduction Act (PRA), any rules that necessitate “information collections” from 10 or more entities, such as the recordkeeping, retention, and reporting requirements adopted in the Fall of 2013, must obtain Office of Management and Budget approval before taking effect. Although the Commission received OMB pre-approval for the collection proposed in the Notice of Proposed Rulemaking, the *Rural Call Completion Order* that the Commission adopted modified, and in some respects expanded, the recordkeeping, retention and reporting burdens. The revised scope of the final rules generated additional PRA comments. The Commission is currently working on a submission to OMB that: (1) addresses the arguments raised during this separate notice and comment process; and (2) is designed to obtain prompt approval from OMB.

**Question 7:** Many believe that call completion problems can be traced to sub-standard intermediate providers. What will the Commission do to ensure that only quality intermediate providers are used to route calls and why has the Commission not taken enforcement action against poor performing intermediate providers?

**Answer:** The Commission has taken enforcement action against intermediate providers. Each of the three companies that have entered into consent decrees with the Commission – Level 3, Windstream, and Matrix – acts as an intermediate provider and carries significant quantities of wholesale traffic. Matrix primarily serves as an intermediate provider for other carriers. Level 3 is subject to potential additional penalties for substandard performance as an intermediate provider under the terms of its consent decree if its wholesale call completion rates to rural areas are more than five percentage points below its wholesale call completion rates to non-rural areas.

Moreover, the Commission’s new rules require covered long distance providers to record and retain detailed information regarding call completion rates for each intermediate provider that the long distance provider uses to terminate calls to rural areas. Many long distance providers did not previously record this information. After the new rules take effect, identifying sub-standard performance among intermediate providers should be easier for long distance providers. This should deter them from using intermediate providers that perform poorly.

The new rules should also facilitate future enforcement actions by the Commission, which can request data regarding individual intermediate provider performance from long distance providers. Moreover carriers may be liable for call completion problems caused by the intermediate providers they employ. The 2012 *Rural Call Completion Declaratory Ruling* stated that “it is an unjust and unreasonable practice in violation of section 201 of the [Communications] Act for a carrier ... to fail to ensure that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately.” This is in accordance with section 217 of the Act, which provides that carriers are liable for the acts of their agents or other persons acting on their behalf. By holding the originating providers responsible for rural call completion problems stemming from the actions of their intermediate providers, the rules encourage originating providers to choose their downstream providers more carefully, with a better eye toward call completion rates.

In addition, covered providers can reduce their recordkeeping, retention, and reporting burdens by using fewer than two intermediate providers. If a long distance provider choosing this option experiences call completion problems, it should be able to quickly identify and remove the problematic intermediate provider.

Prospectively, the *Rural Call Completion Order* sought comment on whether the Commission should extend its recordkeeping and reporting rules to intermediate providers, and whether we should impose certifications or other obligations on such entities. We are currently analyzing the comments.

**Question 8:** When the Commission issued its rural call completion report and order, it requested comment on additional rules. When will the Commission issue an order addressing the additional proposals?

**Answer:** Since releasing the *Rural Call Completion Order*, the Commission has received comments and ex parte presentations on the record suggesting additional steps and proposals that might improve rural call completion rates or reduce reporting burdens. We are analyzing the record to determine the best path forward.