

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Rural Call Completion) WC Docket No. 13-39
Request for Waiver of Midcontinent)
Communications)

ORDER

Adopted: March 31, 2015

Released: March 31, 2015

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. This Order addresses a petition for limited waiver of the recording, retention, and reporting requirements adopted by the Federal Communications Commission (Commission) in the Rural Call Completion Order filed by Midcontinent Communications (Midcontinent) on January 24, 2014. For the reasons discussed below, the Wireline Competition Bureau (Bureau) denies Midcontinent’s request for waiver. However the Bureau, on its own motion, grants to Midcontinent a three-month temporary waiver of 64.2103 and 64.2105 of the Commission’s rules.

II. BACKGROUND

2. The Rural Call Completion Order adopted, among other things, recordkeeping, retention, and reporting rules to improve the Commission’s ability to monitor the delivery of long-distance calls to rural areas, and to aid enforcement action in connection with providers’ call completion practices as necessary. These rules are a critical step toward eliminating significant concerns regarding completion of long-distance calls to rural areas. The reporting requirements instituted by the Order apply to

1 See Rural Call Completion, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154 (2013) (Rural Call Completion Order or Order); Order on Reconsideration, 29 FCC Rcd 14026 (2014) (Rural Call Completion Recon Order).

2 Request for Waiver of Midcontinent Communications, WC Docket No. 13-39 (filed Jan. 24, 2014) (Midcontinent Petition), http://apps.fcc.gov/ecfs/document/view?id=7521067553. Although portions of Midcontinent’s request purport to seek a waiver only of the “reporting requirements,” e.g., id. at i, elsewhere it objects to the obligations to “compile and retain” records as well. E.g., id. at 5. The Bureau understands the request, read as a whole, to seek waiver of the recording, retention, and reporting requirements.

3 47 C.F.R. §§ 64.2103, 64.2105. The Bureau evaluates Midcontinent’s request for waiver pursuant to section 1.3 of the Commission’s rules, which permits the Commission to waive application of its regulations, in whole or in part, for good cause shown. 47 C.F.R. § 1.3. Section 1.3 allows the Commission to act on petition or on its own motion. Id. See also 47 C.F.R § 0.91(b); 47 C.F.R. § 0.291; Rural Call Completion Order, 28 FCC Rcd at 16184, para. 66.(directing Bureau staff to “work with providers to ensure that the providers have the tools they need to complete and file the form in the least burdensome manner possible”).

4 Rural Call Completion Order, 28 FCC Rcd at 16164-91, paras. 19-84, 16211-214, Appx. A; 47 C.F.R. §§ 64.2103-64.2105.

5 See id. at 16160-64, paras. 13-18.

providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines (covered providers).⁶ Covered providers must electronically file quarterly, certified reports with the Commission.⁷ The *Order* also adopted an exemption to these rules, the “smaller covered provider exception,” for providers falling under the 100,000 line threshold.⁸

3. Midcontinent filed a petition for limited waiver of these requirements on January 24, 2014.⁹ It also filed reply comments in support of its petition on May 19, 2014,¹⁰ and met with Commission staff on December 19, 2014 to further discuss the petition.¹¹ The principal arguments put forward by Midcontinent in these submissions are: (1) that the Commission unfairly changed its definition of a covered provider from a 100,000 subscriber threshold, as proposed in the Notice of Proposed Rulemaking preceding the *Rural Call Completion Order (Rural Call Completion NPRM)*, to the 100,000 subscriber lines definition ultimately adopted in the *Order*; (2) that compliance will impose a substantial burden on Midcontinent; and (3) that compliance is unnecessary to ensure that Midcontinent completes rural calls because of its economic incentives and internal monitoring procedures regarding rural call completion.¹²

4. Midcontinent proposed in its request that the Commission “waive the rural call completion reporting requirements until Midcontinent serves 250,000 retail access lines or for three years, whichever period is shorter.”¹³ Additionally, Midcontinent proposed that this waiver be conditioned on its compliance with a more limited set of obligations, namely that it: (1) continue complying with the call completion standards laid out in the ATIS handbook; (2) continue its internal rural call completion monitoring practices; and (3) report “aggregated call completion data and a summary of actions taken to address identified call completion issues” to the Commission on the same quarterly schedule mandated in the *Rural Call Completion Order*.¹⁴

5. In response, a group of rural carriers collectively referred to as the Rural Associations filed comments opposing Midcontinent’s petition,¹⁵ while COMPTTEL submitted comments in support.¹⁶ The Rural Associations argued that the economic and public safety benefits of the reporting requirements “outweigh the relatively minor financial inconvenience of compliance,” and that waiver requests should be considered only when supported by conclusive evidence of comparable call completion performance between rural and non-rural areas.¹⁷ In contrast, COMPTTEL noted that Midcontinent would not have been classified as a covered provider under the initial formulation of the rules proposed in the *Rural Call*

⁶ *Rural Call Completion Order*, 28 FCC Rcd at 16164, para. 19; 47 C.F.R. § 64.2101(c).

⁷ *Rural Call Completion Order*, 28 FCC Rcd at 16184-85, paras. 65-67; 47 C.F.R. § 64.2105(a).

⁸ *Rural Call Completion Order* at 16169, para 27.

⁹ Midcontinent Petition at 1.

¹⁰ Reply Comments of Midcontinent Communications, WC Docket No. 13-39 (filed May 19, 2014) (Midcontinent Reply).

¹¹ Letter from J.G. Harrington, Counsel to Midcontinent Communications, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39 (filed Dec. 23, 2014) (Midcontinent *Ex Parte* Letter).

¹² Midcontinent Petition at i-iii; Midcontinent Reply at 1-3; Midcontinent *Ex Parte* Letter at 1.

¹³ Midcontinent Petition at ii.

¹⁴ *Id.*

¹⁵ See Comments of the Rural Associations, WC Docket No. 13-39 (filed May 12, 2014) (Rural Associations Comments).

¹⁶ See Comments of COMPTTEL, WC Docket No. 13-39 (filed May 12, 2014) (COMPTTEL Comments).

¹⁷ Rural Associations Comments at 3.

Completion NPRM, and argued that Midcontinent should be granted a waiver absent evidence that its internal rural call completion practices are deficient.¹⁸

6. COMPTTEL had previously raised similar arguments regarding the change from a subscriber to a subscriber-line based threshold in this proceeding, in a petition for reconsideration following the *Rural Call Completion Order*.¹⁹ COMPTTEL's petition claimed, among other things, that the Commission failed to give adequate notice under the Administrative Procedure Act (APA) for an exception of smaller providers based on subscriber lines, rather than subscribers.²⁰ The Commission denied COMPTTEL's petition for reconsideration in the *Rural Call Reconsideration Order*, which found that in accordance with the APA, the small carrier exemption in the *Rural Call Completion Order* was a logical outgrowth of the proposal in the *Rural Call Completion NPRM*.²¹

III. DISCUSSION

7. For the reasons stated below, the Bureau denies Midcontinent's request for waiver. However, on its own motion, the Bureau grants Midcontinent a three month extension for compliance with the recording, recordkeeping, and reporting requirements adopted in the *Rural Call Completion Order*.²²

8. Midcontinent seeks a waiver pursuant to section 1.3 of the Commission's rules, which authorizes the Commission to grant waiver of its rules where good cause is shown.²³ As the D.C. Circuit has held, the Commission's exercise of its discretion to waive a rule is warranted "where particular facts would make strict compliance inconsistent with the public interest."²⁴ Under this standard "waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest."²⁵

9. Midcontinent does not show special circumstances that present good cause for a waiver. Although Midcontinent indicates that it will need to make various investments in equipment and staff in order to comply with the reporting requirements,²⁶ Midcontinent does not demonstrate how compliance will be any more costly for it than for any other similarly situated carrier that needs to expend funds to capture the requisite data.²⁷ Because Midcontinent fails to demonstrate special circumstances indicating

¹⁸ COMPTTEL Comments at 2-3.

¹⁹ COMPTTEL Petition for Reconsideration, WC Docket No. 13-39 (filed Jan. 16, 2014) (COMPTTEL Petition).

²⁰ COMPTTEL Petition at 7.

²¹ See *Rural Call Reconsideration Order*, 29 FCC Rcd at 14027, para. 3, 14036-38, paras. 24-30.

²² *Rural Call Completion Order*, 28 FCC Rcd at 16211-13, Appx. A; 47 C.F.R. §§ 64.2103-64.2105; see also 47 C.F.R. § 1.3.

²³ Midcontinent Petition at 3; see also 47 C.F.R. § 1.3.

²⁴ *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

²⁵ *Id.*

²⁶ Midcontinent Petition at 5-7. Midcontinent asserts that "obtaining and installing the necessary equipment and software to capture [the required] data would cost approximately \$150,000" with additional, undetermined costs for hiring staff, processing, and storing the data. *Id.* at 5-6.

²⁷ Cf. *Applications of County of Beltrami, Request for Waiver on Assignment and Use of the Frequencies in the 450-470 MHz Band for Fixed Operations*, File No. 0001273917, Order, 19 FCC Rcd 18763, 18765, para. 8 (2004) ("[C]ost alone does not make application of the Commission's Rules inequitable, unduly burdensome, or contrary to the public interest . . ."); *Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area; Policy and Rules Concerning the Interstate, Interexchange Marketplace; Leaco Rural Telephone Cooperative, Inc.*, CC Dockets Nos. 96-149, 96-61, Second Order on Reconsideration and Memorandum

(continued...)

that it is uniquely and inequitably burdened by compliance with the reporting rules, grant of a waiver is inappropriate under section 1.3.²⁸

10. Further, Midcontinent's voluntary internal procedures, while admirable, are not a substitute for compliance with the Commission's rules.²⁹ Midcontinent asserts that it "has a strong commitment to ensuring that calls to rural customers are completed" and that "the new rules are unnecessary to ensure that Midcontinent expends the maximum effort to achieve that result."³⁰ However, the Commission established the recording, recordkeeping, and reporting requirements because it determined that these rules would best enable it to monitor, understand, and address persistent issues with rural call completion.³¹

11. Finally, the Commission's use of a subscriber-line formula for determining the scope of these rules has been reaffirmed in the *Rural Call Reconsideration Order*.³² Midcontinent is not entitled to a waiver because it disagrees with the Commission's determination that a formula based on subscriber lines, rather than subscribers, best serves the policy goals laid out in the *Rural Call Completion Order*.³³

12. Although the Bureau denies Midcontinent's request, it nonetheless grants Midcontinent a three-month limited-term waiver on its own motion. Midcontinent's waiver request asserts that it may encounter potential inaccuracies and complications in reporting data sets because it is upgrading its switches.³⁴ Although Midcontinent has not provided sufficient information to assume that these purported complications will persist or pose serious problems permanently, given the Commission's strong interest in obtaining accurate data, the Bureau finds that these potential complications warrant grant of a temporary three-month waiver of the otherwise-applicable April 1 deadline.³⁵ Reports to the Commission are due quarterly; this temporary waiver therefore exempts Midcontinent from a full quarterly reporting cycle. The Bureau finds this period will enable Midcontinent either to address any inaccuracy issues that

(Continued from previous page) _____

Opinion and Order, 14 FCC Rcd 10771, 10801, para. 42 (1999) (declining to grant waiver where petitioner failed to show costs beyond those anticipated by the "normal, contemplated functioning of the rules"); *Rural Call Completion, Petition for Limited Waiver of AT&T Services, Inc., Petition for Waiver of CenturyLink*, WC Docket No. 13-39, Order, DA 15-147, para. 19 (Wireline Comp. Bur. rel. Feb. 2, 2015) (considering compliance costs alongside additional factors, including "potential value of [rural call completion] data" in deciding waiver petition).

²⁸ Midcontinent also discusses in general terms its lack of capability to track calls after they are transferred to an IXC and the additional cost associated with segregating call center data. Midcontinent Petition at 6-7. However, these statements reference challenges that are likely to be faced generally by similarly-situated providers, and, in any event, Midcontinent does not present compelling evidence that these constitute the "special circumstances" sufficient to demonstrate good cause for a waiver.

²⁹ See Midcontinent *Ex Parte* Letter at 2 (summarizing "key elements" of Midcontinent's efforts to monitor rural calls).

³⁰ Midcontinent Petition at 8.

³¹ See *Rural Call Completion Order*, 28 FCC Rcd at 16164, para. 19 (stating that the recording, retention, and reporting requirements will "substantially increase [the Commission's] ability to monitor and redress problems associated with completing calls to rural areas" and "will also enhance [the Commission's] ability to enforce restrictions against blocking, choking, reducing, or restricting calls").

³² See *Rural Call Reconsideration Order*, 29 FCC Rcd at 14027, para. 3, 14036-38, paras. 24-30.

³³ *Id.* at 14034, para. 21 ("Excepting providers on the basis of subscriber lines, rather than subscribers, is reasonably designed to minimize burdens on smaller providers without compromising the effectiveness of the rules. The number of lines better reflects a provider's size and share of traffic than does the number of subscribers.").

³⁴ See Midcontinent Petition at 6-7.

³⁵ See *Wireline Competition Bureau Announces that Certain Long Distance Providers Must Begin Recording the Data Required for Rural Call Completion Reporting*, WC Docket No. 13-39, Public Notice, DA 15-291, at 1 (Wireline Comp. Bur. rel. Mar. 4, 2015).

might initially arise from its network upgrades or to file a new request supported by sufficient data to demonstrate a basis for a waiver on an ongoing basis based on the network upgrade.

IV. CONCLUSION

13. For the reasons stated above, the Bureau denies Midcontinent's waiver request but grants it a three-month extension of the April 1, 2015 deadline to come into compliance with sections 64.2103 and 64.2105 of the Commission's rules.³⁶ Accordingly, Midcontinent must begin recording and retaining required data on July 1, 2015, and it must submit its initial quarterly report on or before November 1, 2015.

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the Request for Waiver filed by Midcontinent Communications IS DENIED.

15. IT IS FURTHER ORDERED, pursuant to sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that Midcontinent Communications IS GRANTED a three-month waiver of the April 1, 2015 deadline for compliance with the recording, recordkeeping, and reporting requirements of the Commission's *Rural Call Completion Order*.

16. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Chief
Wireline Competition Bureau

³⁶ 47 C.F.R. §§ 64.2103, 64.2105.