

April 09, 2014

IOWA UTILITIES BOARD

STATE OF IOWA
DEPARTMENT OF COMMERCE
BEFORE THE IOWA UTILITIES BOARD

In the Matter of	Docket No. FCU-2014- <u>0007</u>
The Complaint of Sutherland Mercy Medical Clinic	(C-2014-0005)

REQUEST FOR FORMAL PROCEEDING

Pursuant to Iowa Code § 476.3, the Office of Consumer Advocate (“OCA”), Iowa Department of Justice, requests a formal proceeding regarding the above rural call completion complaint. In support of the request, OCA states:

1. On January 28, 2014, Jason Wilbur of Sutherland Mercy Medical Clinic submitted a complaint to the Iowa Utilities Board (“Board”) alleging personnel at the medical clinic were “trying to contact the hospital in Primghar and [were] unable to complete the call.” According to the complaint, when the calls do complete, they “are dropped or have long pauses in them.” Sutherland Mercy Medical Clinic is located in Sutherland, Iowa. Baum Harmon Mercy Hospital is located in Primghar, Iowa.¹

2. On January 29, 2014, Board staff requested responsive information from Qwest Corporation d/b/a CenturyLink QC (“CenturyLink”), the complainant’s long distance carrier, and West Iowa Telephone Company (“WesTel”), the complainant’s local exchange carrier.

3. On February 18, 2014, CenturyLink responded. According to the response, CenturyLink’s records showed that on January 18, 2014, at 10:05 a.m. and at 10:15 a.m. CST,

¹ Sutherland, Iowa, (population 649) is fifteen miles south of Primghar, Iowa (population 909). Population figures are from 2010 census.

three calls were attempted to the Primghar facility from the number at the Sutherland facility. None of the calls went through. Following CenturyLink's process for investigating these issues, a CenturyLink technician opened a trouble ticket. The technician investigated the trouble and the call paths. The technician was able to locate calls between the calling and called numbers. The technician tested and determined the problem was related to the call routing. According to CenturyLink, the underlying carrier used in the routing was Comcast. CenturyLink removed Comcast from the routing to the NPA/NXX of the Sutherland facility and notified Comcast of this action. After the routing change, test calls went through.

4. On February 18, 2014, Board staff requested responsive information from Comcast.

5. On February 27, 2014, WesTel responded to the inquiry from Board staff. According to the response, WesTel technicians reviewed call records from the time noted in the complaint, and found that all calls during that time were properly routed by its switch. A WesTel technician placed two calls on February 24, 2014, which were completed. WesTel stated that the customer reported that calls have been working better and that the problem was likely a problem with the long distance carrier.

6. On March 10, 2014, Comcast responded to the inquiry from Board staff. According to the response, Comcast researched the calls and did not find any call records indicating that Comcast carried the calls. Comcast added that its records indicated that Comcast successfully carried calls between the same numbers over a period of several months.

7. On March 3, 2014, Iowa Network Services ("INS") provided information to Board staff regarding the complaint. INS stated that it had opened an investigation into the call termination issues in the complaint. INS noted that it provides both the originating and

terminating access tandem switching function for the calls in question. INS reviewed call log data for its network signaling system. Based on its review, INS concluded that for each of the failed calls, the long distance carrier did not signal the destination telephone company to complete the connection.

8. On March 26, 2014, Board staff issued a proposed resolution. The proposed resolution concluded

A. Long-distance providers should not initiate a signal that indicates that a call has been answered, and the signal should only come from the called customer.

B. Long distance calls where INS is on both the originating and terminating tandem would begin with the local exchange carrier, WesTel, which would route the call to INS; INS would route the call to the long-distance carrier, CenturyLink; CenturyLink would route the call to the underlying carrier, ComCast; then the call would route back to INS to send to the local telephone provider for the called number.

C. With respect to the calls in the complaint, INS received the calls from WesTel and routed them to CenturyLink. CenturyLink routed the calls to an underlying carrier. CenturyLink's routing tables show that at the relevant time, Comcast was the assigned vendor.

D. Comcast claims it never received the calls referenced in the complaint. The calls were not routed to the INS terminating tandem from the long distance carrier. Nonetheless, there was an answer signal sent to bill the calls.

E. The proposed resolution states that Board staff was "not clear as to what happened to the calls." Staff also stated that "[b]ased on the fact the calls were not

handed off to INS, staff finds that it is improper for a long-distance carrier to send that answer supervision without first receiving the signal from the terminating LEC.

F. Board staff found that “the long-distance carrier (which in this case is CenturyLink and its underlying carrier(s)) failed to deliver or complete the calls.

G. Board staff also found “that it would be irresponsible and a potential violation of federal rules to send a false ring indication on any call that has not been answered by the called party.” Staff further noted that “the record in this case does not contain sufficient detail for staff to conclude” whether federal rules were violated.

9. For the reasons stated in the remaining paragraphs of this request, there is a “reasonable ground for investigation,” within the meaning of Iowa Code § 476.3. The problems reported by Sutherland Mercy Medical Clinic are not unique. They are occurring with more than sufficient frequency, and to more than a sufficient number of rural telecommunications consumers, both in Iowa and across the nation, to justify an investigation.

In Iowa:

A. The Board recently granted a petition seeking a formal proceeding based on a complaint alleging that calls failed to complete from a hospital in Britt, Iowa to a nearby medical clinic in Kanawha, Iowa. According to the complaint, “calls won’t ring, calls won’t answer and it seems to be getting worse not better.” See *In re Hancock County Health System*, FCU-2013-0005 (Order dated June 10, 2013).

B. The Board granted a formal proceeding based on another recent complaint, this one alleging that a medical clinic in Huxley, Iowa, was unable to get urgent test results from Mary Greeley Medical Center, ten miles north in Ames, Iowa. The complaint also alleged fax issues and calls not getting through to the answering

service after hours. The complaint stated: “If we fail to provide care for a patient and something awful happens because we were unable to make or receive a phone call, there are terrible consequences.” See *In re Huxley Family Physicians*, FCU-2013-0004 (Order dated May 23, 2013).

C. The Board granted a third petition seeking a formal proceeding based on a complaint alleging that calls and faxes failed to complete from health care facilities in Shell Rock, Iowa, and Waverly, Iowa, to a nearby rehabilitation center in Allison, Iowa. The administrator of the Allison facility advised she never really knows whether the facility has missed a call and has lost confidence in the reliability of the system. See *In re Allison Rehabilitation Center*, No. FCU-2012-0019 (Order dated March 14, 2013)

D. The Board granted a petition seeking a formal proceeding based on two recent complaints alleged difficulties experienced by two daughters in trying to reach their 97-year-old mother in Emerson, Iowa, (population 438). The first complainant was trying to call from Red Oak, Iowa, eleven miles away, the second from Glenwood, Iowa, thirty miles away. The first alleged difficulties including ringing and ringing on the calling party’s end but no ringing on the called party’s end, ringing once or twice then a busy signal or drop, and a connection so poor the parties couldn’t hear each other. The second alleged that the calls sometimes ring through without difficulty, but other times “it rings once or twice and then goes dead,” and still other times “it may ring sounding fine for the first couple of rings and then the ring sounds garbled and if mother tries to answer we cannot hear or understand each other.” She stated she has hung up and tried as many as 8-10 times and after numerous tries the call may go through. She says she can tell immediately if the ring sounds clear and if the call is

going to be proper. She observed that their mother did not have difficulty making outgoing calls. See *In Re Adolphson and Skallerup*, No. FCU-2013-0006 (Order dated June 24, 2013).

E. The Board granted a petition seeking a formal proceeding based on alleging difficulties calling from Mt. Pleasant, Iowa, to Mediapolis, Iowa, (population 1,560), a distance of 23 miles. The complainant alleged she had spent hours on the phone trying to place the call and that the problem had been going on for months. The complainant stated her friend in Mediapolis could call her. The complainant said she thought the routing was being done on a cheaper service. She said she “did talk to Shirley who works for Windstream and . . . told her to change the routing on my phone which I knew they could do and she told me she would talk to her supervisor.” After that, the trouble stopped. *In re Frahm*, Docket No. FCU-2013-0007 (Order dated July 15, 2013).

F. The Board granted a petition seeking a formal proceeding based on alleging difficulty placing a call from Clive, Iowa, to West Liberty, Iowa, (population 3,736) a distance of 142 miles. The complaint alleged the call went through but the called party did not answer because the caller ID gave an incorrect calling party name and calling party number. *In re Pals*, Docket No. FCU-2013-0009 (Order dated July 1, 2013).

G. The Board continues to see rural call completion complaints. See file nos. C-2013-0088 (Jody Schulte), C-2013-0130 (Palo Alto County Health System), C-2014-0004 (Kossuth Regional Health Center).²

Nationally:

H. In a February 2012, declaratory ruling, the Federal Communications Commission noted evidence of a pattern of call completion and service quality problems on long distance calls to certain rural areas.³

I. In a July 2012, (second) resolution on the topic, the National Association of Regulatory Utility Commissioners (NARUC) observed that call completion failure rates are 13 times higher in rural areas than in non-rural areas, that of one hundred rural telephone lines tested, one in five experienced failure rates of 10 percent or greater, while one in three had a “total issues” (call failure, poor quality, or delayed set-up) rate greater than 20 percent, and that rural call termination issues remain “serious” and “widespread” and “continue to threaten public safety, homeland security and consumer welfare in rural America.”⁴

²A petition for formal proceeding is pending on No. C-2013-0088 (FCU-2014-0002). OCA did not seek a formal proceeding on nos. C-2013-0130 and C-2014-0004 because the specifics of those complaints involved interstate rather than intrastate calls.

³ Declaratory Ruling, *Developing an Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, and *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, 27 F.C.C.R. 1351, 2012 WL 387736 (FCC 2012), ¶ 1.

⁴ NARUC, Resolution Addressing Rural Call Termination Issues (July 25, 2012), <http://www.naruc.org/Resolutions/12%200801%20Passed%20Resolution%20Addressing%20Rural%20Call%20Termination%20Issues.pdf>.

J. In a November 2012, press release, the National Exchange Carriers Association (NECA) described the problem as a “mounting epidemic,” with call completion issues continuing to occur at “alarming” rates.⁵

K. In a February 2013, notice of proposed rulemaking, the FCC stated: “Completion rates of long-distance calls to rural . . . areas are frequently poor.”⁶ And again: “[t]here is ample evidence that rural call completion problems are widespread and serious.”⁷

L. The FCC added: “Rural associations suggest that the call-completion problems may arise from the manner in which originating providers set up the signaling and routing of their calls, and that many of these call routing and termination problems can be attributed to intermediate providers.”⁸

10. As stated by the FCC, call completion problems can have dire consequences. Small businesses can lose customers who get frustrated when their calls don’t go through. Urgent calls from friends and families can be missed. Schools may be unable to reach parents with critical alerts. Those in need of help may be unable to reach public safety officials.⁹ In addition, as here, health care facilities may be left without an ability to provide the care their

⁵ NECA, Press Release, “Survey by Rural Telecom Associations Finds Call Completion Problems Persist: Complaints on the Rise As Consumers Grow Frustrated with Repeated Occurrences of ‘Dead Air,’” (Nov. 15, 2012), https://www.neca.org/cms400min/NECA_Templates/PublicInterior.aspx?id=8287.

⁶ Notice of Proposed Rulemaking (NPRM), *Rural Call Completion*, FCC 13-18, WC Docket No. 13-39 (Feb. 7, 2013) ¶ 2.

⁷ *Id.*, ¶ 13.

⁸ *Id.*, ¶ 6. In particular, as the FCC had previously advised, according to the rural associations, many of the problems appear to lie with the underlying routing providers selected by the retail long distance carriers, including “least cost routers,” which attempt to connect calls to their destinations at the lowest cost possible. These routing practices can have the effect of blocking, choking, reducing or otherwise restricting traffic. Declaratory Ruling, note 8 above, ¶¶ 3,7.

⁹ Declaratory Ruling, note 8 above, ¶ 2.

patients need due to the failure of calls and faxes from one facility to another. In rural areas, where patients, particularly elderly patients, may still be inclined to call their clinic rather than 911 even when needing emergent care, a patient may fail to receive necessary care if the call fails to complete. As stated by both U.S. senators from Iowa and 34 of their colleagues, “[w]e . . . worry it is only a matter of time before this situation leads to tragedy.”¹⁰

11. In its July 2012, resolution, NARUC observes: “it appears that some carriers are not taking the declaratory ruling seriously.” NARUC continues: “[t]he call termination issues seem unlikely to be resolved unless and until a provider that has failed materially and repeatedly to route calls to destinations as sought by originating carriers faces serious consequences for such failures.”¹¹

12. Here, the file raises more questions than it answers, leaving the Board not much closer to understanding who and what caused the difficulties experienced by Sutherland Mercy Medical Clinic than was the case on the day the complaint was filed.

13. CenturyLink advised the problem was related to the call routing and that removal of Comcast as the underlying carrier solved the problem. Comcast claims to never have received the calls in question. Neither CenturyLink nor Comcast explains what happened to the calls in question.

14. INS reported that the calls in question were not routed to the INS terminating tandem for completion, but that the INS originating tandem received answer supervision for calls for which it never received a terminating call attempt. Investigation is needed to

¹⁰ See letter to Julius Genachowski, Chairman, FCC, dated December 3, 2012, available at <https://prodnet.www.neca.org/publicationsdocs/wwwpdf/12312congress.pdf>.

¹¹ NARUC, Resolution Addressing Rural Call Termination Issues (July 25, 2012), <http://www.naruc.org/Resolutions/12%200801%20Passed%20Resolution%20Addressing%20Rural%20Call%20Termination%20Issues.pdf>.

determine what actually happened and to acquire an understanding as to how one company's system can indicate a call was completed while another company's system can indicate the call was not completed.

15. Investigation is needed regarding the routing of the calls, the changes made to the routing, and the reasons why CenturyLink concluded the re-routing would improve the likelihood that the calls would complete.

16. Investigation is needed regarding the performance requirements, metrics, and standards imposed by CenturyLink on other companies that are carrying the traffic, in order to ensure that attempted calls complete.

17. The difficulties may be attributable to the lack of compatibility between traditional time-division multiplexing (TDM) and new Internet protocol (IP) switches and signaling systems. Investigation is needed to determine whether that is the case and if so, what can be done to secure the needed compatibility.

18. The fact that a problem is corrected by re-routing after calls have failed to complete and after an adversely affected party complains is not a full or adequate solution. What is needed is an understanding of the cause of the problem and tools with which to prevent it before it occurs.

19. While the Federal Communications Commission plays a central role nationally in a long-term resolution of the problem, there is no reason for the Board to step aside. On the contrary, the most effective way to address and solve the problem, especially near-term, is for state and federal officials to work in mutually supportive ways within their respective jurisdictions. As the FCC observes, NARUC's (first) resolution on the topic urged its state

members to “take all appropriate actions to protect consumers by immediately addressing the call terminating issues that exist.”¹² The word “immediately” is important.¹³

20. The Board is more familiar than the FCC with the geography, and in many or most cases, the relevant players in O’Brien County, Iowa. It is closer to the scene and to many or most of the relevant sources of information. It has a focused interest in seeing that calls are completed to rural destinations in Iowa, including the Baum Harmon Mercy Hospital, and more generally in seeing that the quality of service provided to rural communities in Iowa is preserved and restored and not lost or further degraded. It has a focused ability to commit resources to investigating the source of the difficulties occurring in Iowa and to seeking remedies and enforcement when needed, to the end that the problems do not recur. By contrast, resource constraints may prevent the FCC from conducting a granular investigation of the local landscape across an entire nation.

21. Potentially, the Board may uncover violations of the federal obligations addressed in the FCC’s declaratory ruling. If so, the violations can be reported to the FCC with a request for enforcement action. Because resource constraints at the FCC may be less of an inhibiting factor for the FCC when the FCC is presented with a completed investigation than when it is presented with a file that does not identify the cause of the difficulty, the FCC may be more able to proceed with an enforcement action in the latter case than the former, thus advancing the goal that the problems be brought to an end, and sooner rather than later.

¹² FCC Declaratory Ruling, note 8 above, ¶ 8.

¹³ The FCC states in its declaratory ruling that it has adopted rules that should ultimately address the root causes of rural call completion problems. In particular, it has comprehensively reformed intercarrier compensation, with a transition that will gradually reduce most termination charges. At the end of the transition, the FCC concludes, the rules should eliminate the primary incentives for cost-savings that appear to be undermining the reliability of telephone service. However, as NARUC has argued, and as the FCC agrees, “there is a need to limit the adverse impact of these rural call completion problems on consumers in the near term.” Declaratory Ruling, note 8 above, ¶ 10.

22. Insofar as federal law is concerned, the state is also free to police directly the delivery of intra-state telecommunications services. See *Louisiana Public Service Com'n v. FCC*, 476 U.S. 355, 360 (1986). There may be remedial or enforcement tools available to the Board under the laws of Iowa and the Board's regulations. That, too, merits investigation. If it turns out existing Iowa laws and regulations are inadequate to give the Board the tools it needs to police the problem directly, investigation may suggest a need for new regulations or a new law providing those tools.

23. The failure of calls and faxes to complete affects the health, safety, and welfare of Iowans. Calls for help may not be answered, and in this case a county hospital was apparently unable to communicate with a nearby medical clinic on patient needs.

24. An investigation will materially enhance the ability of the Board and its staff to participate on a well informed basis in ongoing workshops designed to assess the problem and devise a solution.

25. An investigation will materially contribute to solving the problem, because carriers will know they are being watched, with a view toward enforcement when needed.

WHEREFORE, OCA requests a formal proceeding on Sutherland Mercy Medical Clinic's complaint.

Respectfully submitted,

Mark R. Schuling
Consumer Advocate

/s/ Anna K. Ryon

Anna K. Ryon
Attorney

1375 East Court Avenue
Des Moines, IA 50319-0063
Telephone: (515) 725-7200
E-Mail: IowaOCA@oca.iowa.gov

OFFICE OF CONSUMER ADVOCATE

Copies sent electronically to:

Jason Wilbur, Mercy Medical Center Sutherland
wilburjg@mercyhealth.com

Robert Gannon, West Iowa Telephone Company
bgannon@westelsystems.com

Diana Ornelas, CenturyLink
diana.ornelas@CenturyLink.com

Maria Graham-Baptist, Comcast Phone of Iowa, LLC
Maria_Graham-Baptist@cable.comcast.com

Leon Hofer, Iowa Network Services
Leon.Hofer@iowanetworkservices.com