

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

In the Matter of)
)
Rural Call Completion) WC Docket No. 13-39

**REPLY COMMENTS
of
NTCA – THE RURAL BROADBAND ASSOCIATION, the
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc., the
WESTERN TELECOMMUNICATIONS ALLIANCE, and the
EASTERN RURAL TELECOM ASSOCIATION**

June 11, 2013

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I. INTRODUCTION AND SUMMARY

The need to address our national call completion crisis promptly and comprehensively is incontrovertible. Multiple parties in this proceeding, in addition to consumers, state regulators, and members of Congress have, along with the Rural Associations, reiterated the Commission’s pertinent assessment that the call completion epidemic results in “dire consequences” to consumers, economic development, and public safety across the nation. The Commission, after many workshops, numerous filings, a multitude of individual consumer and business complaints, and some efforts at enforcement action is likewise well aware of the scope of the call completion crisis – and the serious and severe threat that it poses to public safety and commerce.

Thus, it is nothing less than suspicious – even galling – when, despite the extensive record and voluminous evidence available, and the clear and present danger to the public, certain parties attempt to minimize or even deny the extent of the current and continuing epidemic. Progressively expansive surveys, tests, and studies have been conducted over an extended period of time. The industry kept the Commission and others apprised of these efforts as they were

undertaken, data were turned over to interested parties, and results painstakingly reviewed by the Commission and industry experts. Accordingly, the Commission should not – and cannot, for the sake of those many consumers affected by these issues – allow a handful of service providers to distract attention from the need for immediate resolution of these issues simply because it may create some work for those providers or cost them a few more dollars in routing expense and/or compliance efforts. These providers have made a commitment to their customers in the retail or wholesale space to transmit calls from one point to another. Consistent with its core statutory mission, the Commission can and must hold them accountable to that commitment.

The seriousness of the problem, and the continued immediacy of its effects on consumers and businesses, also illustrate why calls for delay merit no consideration. Solutions to the underlying issues are long overdue. The longer the American public is forced to endure a deteriorating network, the greater the negative repercussions will be, and the greater the risk of harm to public health and safety, in addition to businesses and employment. Claims that access rate unification scheduled to occur in July of next year (or other changes to the access regime) will help ameliorate the problem are specious and self-serving. Indeed, as discussed in the initial round of comments, even where rate unification has already occurred, call completion issues persist. Removal of one of the financial incentives to block or degrade calls will do nothing to address problems caused by other financial incentives, subpar technical expertise, neglect in call routing management, or shoddy network engineering.

The carriers represented by the Rural Associations are the smallest in the industry and frequently bear a disproportionately heavy burden of many regulations. They certainly understand the need to balance carefully the burden of obligations with the benefits to be derived from them. Therefore, our members support only tailored reporting requirements in all

circumstances. But in the present case, the majority of the requested data is already collected by facilities-based originating carriers in their normal course of business. Even to the extent that any new requirements might impose some burdens on these carriers, they are clearly outweighed by the burdens borne by consumers and businesses when calls are not completed.

Particularly for those who would once more use the “veil of IP” to exclude themselves from such obligations, it is essential the Commission not permit entire classes of providers that purport to provide the most “advanced” and “cutting-edge” services to deliver those services in such a way that makes the completion of each call an uncertain proposition. Such a loophole would quickly render all of the Commission’s work here on behalf of consumers irrelevant, and result in nationwide interconnected networks that are “best effort” for voice calls and other types of communications upon which people rely for public safety, health, and security. The Commission cannot fulfill its fundamental statutory obligation to ensure the seamless interconnection of networks to the benefit of consumers and businesses if it leaves the determination of who is and who is not covered by the proposed reporting obligations to providers themselves.

The established severity and extent of the call completion crisis also demonstrates why the safe harbors proposed in the NPRM¹ are premature and should not be implemented. Those supporting safe harbors have offered no evidence that these measures have any basis in actual facts and circumstances, or that they would have any significant positive impact on resolving or even mitigating the call completion crisis. To the contrary, the proposed safe harbors would only create loopholes and end-runs that would undermine attempts to identify the causes of, and then resolve, the crisis, while doing little to ease the relatively light reporting obligations under

¹ *Rural Call Completion*, Notice of Proposed Rulemaking, WC Docket No. 13-39, 28 FCC Rcd. 1569 (2013) (*NPRM*).

consideration. If any safe harbor or reporting exemption is established, it should only be earned through a sustained demonstration of good behavior by providers over a reasonable period of time following adoption of the reporting requirements. Put another way, there should be no “free passes” given out. At a minimum, providers must transmit calls successfully, and any exclusion from reporting rules should instead be afforded only after a thorough assessment of actual data clearly establishes that sustained demonstrable progress has been made by each provider in question toward resolving the problem.

In addition, it is inexcusable to side-step customers’ reasonable expectations that they will receive accurate ring-back signals when placing calls. Accordingly, there is widespread support for the proposed signal integrity rule, which would prevent calling parties from hearing false ring-back tones or other confusing or misleading sounds or messages. It is disappointing, although not surprising, that there is even token opposition to this common-sense proposal. The objection is based only on a weak jurisdictional question and a trite and hollow claim that such a common-sense step might somehow stifle “innovation.” Indeed, the Commission should be quite troubled by any purported “innovation” whose success hinges decidedly upon the ability to deceive consumers; it is further unclear what is particularly “innovative” as a categorical matter about the mere wholesale transmission of data in one protocol or another from point A to point Z. The Commission should therefore ignore this obvious cry of “wolf,” and implement its call signaling proposal without delay.

Finally, there is no reason that call completion data should not be made public. While competitively sensitive information can and should be protected, that is not the case in this proceeding. Parties opposed to public release of call completion data have not offered an explanation for their position. Disclosure will serve as a positive incentive to originating carriers

and providers to ensure calls made by their customers will complete. Lacking a reason for anything other than disclosure, data should be made public.

In short, the call by certain parties for delay or distraction in addressing this crisis represents the one call that should not complete. For all other calls, the Commission should follow through on its commitment – its statutory obligation – to demand seamless connectivity across communications networks, and ensure that consumers and businesses are no longer left in the lurch merely by virtue of where they happen to live or conduct business. Sensible, balanced reporting obligations that track the extent to which carriers and others who hold themselves out as transmitting voice calls are living up to these obligations represent tools the Commission must have if it is to fulfill its essential statutory obligations to American communications consumers.

II. RURAL CALL COMPLETION PROBLEMS REPRESENT A REAL THREAT TO THE NATION’S TELECOMMUNICATIONS SYSTEM AND THE COMMISSION’S FUNDAMENTAL MISSION. THEY CANNOT BE IGNORED OR “WISHED AWAY.”

Faced with overwhelming evidence of rural call completion problems, a few opponents of accountability resort first to denial, arguing the evidence is merely anecdotal or the problems are inherent to rural areas. Sprint, for example, criticizes studies from the Rural Associations, claiming these studies do not present reliable evidence of a pervasive problem among long distance providers, and that details supporting them have not been made publicly available or subjected to independent review.² Beyond questioning the studies, a number of parties also argue essentially that there is “nothing to see here” as their own undisclosed analyses show only “anecdotal” instances of failure.³ Some commenters even suggest increases in rural call

² Sprint at 5.

³ See, e.g., *id.* at 8, 10 (claiming it saw no “epidemic” in rural call completion or call quality problems for Sprint originated or Sprint handled long distance traffic); CenturyLink at 5-6, 20

completion complaints over the past year are due to rural providers directing customers to file complaints directly with the FCC to raise the profile of the issue.⁴

In fact, the “profile” of this issue has been raised because hard evidence shows rural call completion problems are real and increasing in severity. Over the course of the past two years the Rural Associations have collected extensive data pertaining to rural call completion. During the course of three member surveys and two test call projects, the Rural Associations have accumulated substantial data demonstrating the increasing extent of the problem.⁵

Anecdotal information gained early in this process identified many of the technical reasons calls were failing, delayed, or completed with poor quality, including call looping, improper routing, faulty routing table set-up, and improper compression. These are now widely understood by the industry as significant contributing factors to rural call completion problems.⁶

Consumer complaint data collected in the surveys is both extensive and conclusive. For example, 80 percent of RLECs responding to the Associations’ first survey in February 2011

(claiming information received to date by the FCC concerning the nature and scope of the rural call completion issue has largely been anecdotal); Verizon at 5 (asserting nearly half of the complained-of call completion difficulties could not be substantiated by its own call records).

⁴ Verizon at 5. *See also* Level 3 at 14. This, of course, is akin to blaming increases in reported crimes on civic public awareness efforts. Regardless of such awareness efforts, a consumer who did *not* experience a call completion issue would clearly have no reason to go to the trouble of filing a call completion complaint.

⁵ The Rural Associations surveys were conducted in February 2011, April 2011, and October 2012. *See* Letter from Michael R. Romano, NTCA, to Marlene H. Dortch, WC Docket No. 07-135 (filed Mar.11, 2011) (*Associations’ March 11, 2011 Letter*); Letter from Michael R. Romano, NTCA, *et al.*, to Theresa Z. Cavanaugh and Margaret Dailey, Enforcement Bureau, FCC (filed June 13, 2011) (*Associations’ June 13, 2011 Letter*); and Letter from Colin Sandy, NECA, to Marlene H. Dortch, FCC, WC Docket No. 07-135, *et al.* (filed Nov. 15, 2012) (*Associations’ November 15, 2012 Letter*). The Rural Associations conducted Test Call Projects in August 2011 and April 2012. *See* Letter from Jill Canfield, NTCA, to Marlene H. Dortch, FCC, WC Docket No. 07-135 (filed Oct. 7, 2011) (*Associations’ October 7, 2011 Letter*); Letter from Colin Sandy, NECA, to Marlene H. Dortch, FCC, WC Docket No. 07-135 (filed May 21, 2012) (*Associations’ May 21, 2012 Letter*).

⁶ ATIS Intercarrier Call Completion/Call Termination Handbook at 4.1.3.2, 4.2.1 and 4.3.5.

indicated they had received consumer complaints about call completion,⁷ and respondents to the second survey in April 2011 reported more than 10,000 consumer call completion complaints, with the number of complaints increasing 2,000% during the April 2010 to March 2011 time frame.⁸ More recently, respondents to the Associations' October 2012 survey reported complaints in the seven months following the release of the Commission's Declaratory Order⁹ have remained the same or increased when compared to the seven months prior to the Order's release.¹⁰

The Rural Associations are not the only parties collecting and reporting consumer complaint data. For example, the ATIS Next Generation Interconnection Interoperability Forum ("NGIIF") also gathered data from rural LECs, which it used in the development of its Intercarrier Call Completion/Call Termination Handbook.¹¹ Associated Network Partners, Inc. ("ANPI"), a long distance wholesaler, reported 85 percent of respondents to its survey noted rural call completion problems persisted and that a majority of the respondents characterized their call completion problems as "serious" or "chronic."¹² The Oregon Public Utility Commission recently reported receiving more than 1,600 consumer complaints between June 2011 and December 2012.¹³ The Commission itself, during the period September through

⁷ See *Associations' March 11, 2011 Letter*.

⁸ See *Associations' June 13, 2011 Letter*.

⁹ *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory Ruling, 27 FCC Rcd. 1351 (2012) ¶ 2 (*Declaratory Ruling*).

¹⁰ See *Associations' November 15, 2012 Letter*.

¹¹ See Letter from Tom Goode, ATIS, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (filed Feb. 10, 2012).

¹² ANPI at 5.

¹³ *Commission Adopts Rules to Tackle Rural Call Completion Problems*, Oregon PUC (Dec. 19, 2012), <http://www.oregon.gov/puc/Pages/news/2012/2012014.aspx>

November 2012, reported it had received more than 500 informal complaints.¹⁴ The Commission also reported hearing from consumers about “poor call reception, service outages [and], service disconnects” with interstate telecommunications services.¹⁵

Some providers attempt to downplay these results by wrongly equating consumer complaints to the number of call failures.¹⁶ As previously pointed out by the Rural Associations, however, consumer complaints are only the “tip of the iceberg.”¹⁷ Complaints may be made only in those instances when an RLEC customer happens to learn he or she has *not* received calls. Even then, consumers are not likely to complain until multiple instances occur.¹⁸ Thus, each filed complaint may represent dozens or even hundreds of call failures.

The Associations also conducted two test call studies. In the first, conducted in August 2011, nearly 25 percent of test calls exhibited call completion issues (call failure, poor voice quality, and delayed set-up) with an astonishing 16 percent call failure rate.¹⁹ Despite some apparent improvement, calls to rural test lines in the Associations’ second test call project in April 2012 failed at a rate 13 times higher than calls to non-rural test lines, and one in three test lines had a “total issues” rate greater than 20%.²⁰

¹⁴ *NPRM* n. 34.

¹⁵ *Report Of Consumer Inquiries And Informal Complaints*, Fourth Quarter, Calendar Year 2012 Top Consumer Issues – Subject Category Reference Guide, May 9, 2013, at page 7.

¹⁶ *See, e.g.*, Sprint at 8 (“While ‘hundreds’ of complaints may have been filed with the Commission, this is only a tiny fraction of the billions of calls that have been successfully delivered to rural customers.”)

¹⁷ *Associations’ June 13, 2011 Letter* at 5.

¹⁸ *Associations’ March 11, 2011 Letter*.

¹⁹ *Associations’ October 7, 2011 Letter*.

²⁰ *Associations’ May 21, 2012 Letter*. A few commenters suggest that increases in complaint data may be caused by shortcomings in terminating RLEC networks. *See, e.g.*, Level 3 at 3; Hypercube at 6. While no network is perfect, repeated investigations into consumer complaints (including cooperative troubleshooting with originating providers), have consistently shown

Some commenters criticize the methods used in these surveys and test call projects.²¹ It bears noting, however, that methods used in these data collections were discussed thoroughly with Commission staff, and the Rural Associations' October 2012 survey incorporated staff input.²²

The Commission must look past attempts to discredit conclusive evidence of rural call completion problems and react swiftly to address this industry epidemic. It is important to bear in mind that the proposals set forth in the NPRM largely focus on *collection of additional data*, not punitive measures. In other words, this is the very "study of the issue" that those who urge delay have suggested. It would, however, be undertaken in a systematic, rather than *ad hoc*, manner pursuant to common standards and codified rules. The Rural Associations' studies (as well as evidence presented by other parties) clearly demonstrate the existence of a problem meriting at a bare minimum collection of comprehensive call completion data from individual providers as proposed in the NPRM.

III. THE ICC RATE REDUCTIONS IMPOSED BY THE *USF/ICC ORDER* WILL NOT RESOLVE RURAL CALL COMPLETION PROBLEMS.

The Commission should summarily reject the notion that rural call completion problems will largely disappear in a few months when the next step in the ICC rate transition plan adopted in the 2011 *USF/ICC Order* is implemented.²³ Evidence suggests that heeding these arguments

most failures occur outside RLEC networks. *See Associations' June 13, 2011 Letter; Associations' November 15, 2012 Letter.*

²¹ *E.g.*, Sprint at 4-7; CTIA at 3, note 7.

²² *See Associations' November 15, 2012 Letter.*

²³ *See Frontier Communications at 3-4. See also Connect America Fund, WC Docket No. 10-90, A National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation*

will only delay efforts to eliminate the call completion problems that have been plaguing rural consumers and businesses.

To begin with, previous reductions in RLEC terminating access rates and reciprocal compensation rates have not reduced rural call completion problems. The move to “bill-and-keep” for LEC to CMRS intraMTA traffic has been in place for over a year, yet call completion problems for CMRS customers attempting to call RLEC customers within the same MTA have not diminished.²⁴ Reductions in intrastate access rates (in Michigan, Maine, Kansas, and New Mexico, for example) have similarly failed to ameliorate rural call completion problems. Thus, Frontier’s suggestion²⁵ that parity between inter- and intrastate access rates will soon cause call completion problems to diminish is not supportable. Moreover, because RLECs’ unified intrastate and interstate access rates will remain higher than those of other ILECs, the Commission cannot reasonably expect mandated ICC rate reductions to curb rural call completion issues.

In addition, access rates are not the only costs of terminating calls to RLEC service areas. A large number of calls to RLECs’ customers are transported over lengthy transport and transit routes operated by third parties who receive compensation from toll providers. In RLEC service areas, these routes are both remote and lightly trafficked, and thus transport/transit rates are likely to remain higher than in other areas even after the ICC rate transition is complete. As a result, least-cost-route (“LCR”) providers will continue to have an incentive to reduce their costs

Regime, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96- 45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service – Mobility Fund*, WT Docket No. 10-208, Report and Order and FNPRM, 26 FCC Rcd. 17663 (2011), *pets. for review pending*, *Direct Commc'ns Cedar Valley, LLC v. FCC*, No. 11-9581 (10th Cir. filed Dec. 18, 2011) (*USF/ICC Order*).

²⁴ See *Associations’ November 15, 2012 Letter*, attach. at 1.

²⁵ Frontier at 4.

via network shortcuts or outright call blocking. Any delays, or arbitrarily early termination of reporting requirements, only risks perpetuating harms to rural consumers.

USTelecom is correct when it states that the Commission should consider factors other than access arbitrage that could be contributing to rural call completion problems.²⁶ For example, USTelecom suggests that barriers preventing prompt updates of the local exchange routing guide (“LERG”) and issues connected to the evolution of the voice network may be contributing factors.²⁷ Yet, while these factors may contribute to rural call completion problems they are present in non-rural areas as well. Indeed, the fact that multiple factors may be contributing to the problem argues in favor of immediate adoption of robust data collection and reporting requirements that can “get to the root of the problem” and ultimately provide relief to rural consumers.

It should also be noted, as Bandwidth.com correctly recognizes, that recent Commission action to grant non-carriers access to numbering resources may undermine the Commission’s goals in this proceeding.²⁸ That proceeding and the ongoing IP transition proceeding²⁹ should certainly be coordinated as recommended by Bandwidth.com to ensure that the transition to IP is consistent with the protection of consumers and the concept of universal service. However, that process must proceed on its own path, and must not distract the Commission from moving as expeditiously as possible to restore reliability to voice telephony for rural consumers. With this in mind, as discussed further below, it is essential the Commission apply these call completion rules to IP providers as well, and not allow a self-selected class of providers to exclude

²⁶ USTelecom at 6.

²⁷ *Id.*

²⁸ Bandwidth.com at 1- 4.

²⁹ *Technology Transitions Policy Task Force Seeks Comment on Potential Trials*, Public Notice, GN Docket No. 13-5, DA 13-1016 (rel. May 10, 2013).

themselves from obligations to complete all voice calls, regardless of the destination or technology used.

IV. DATA COLLECTION AND REPORTING REQUIREMENTS PROPOSED IN THE NPRM ARE REASONABLE CONSIDERING THE URGENT NEED TO ADDRESS CALL COMPLETION PROBLEMS.

A. The Majority of Required Data is Already Collected by Most Providers and is Necessary for Investigation Purposes.

Several providers argue the burdens from proposed recordkeeping and reporting requirements would be excessive. They claim they currently do not collect all of the data proposed in the NPRM, and that collecting the data and producing reports would be extremely costly.³⁰ Providers also suggest the measurement period should be not less than one month;³¹ that the reporting interval should be longer (quarterly); the record retention period should be shortened from 6 to 3 months; and that they should be allowed to report based on samples of data.³²

The Rural Associations explained in their initial comments that the data items proposed in the NPRM will provide the Commission with the ability to detect and investigate poor call completion performance, and that most of this data is in fact already collected by providers.³³ Comments by several providers support these observations. Level 3, for example, indicates it does not object to the requirement to capture and retain much of this information for a limited

³⁰ See, e.g., Verizon at 6; Sprint at 13; Frontier at 3; CenturyLink at 14; COMPTTEL at 8. Sprint estimates it would cost approximately \$550,000 per month for the systems needed to collect, sort, and store for a rolling 6-month period the call data proposed in the NPRM, plus costs of hiring two additional employees, at a cost of approximately \$100,000 per person per year. *Id.* at 18. Engaging in hyperbole, Sprint suggests the total additional costs would add up to “billions.” *Id.*

³¹ E.g., CenturyLink at 10.

³² E.g., Frontier at 9; Verizon at 2, 9, 13.

³³ Rural Associations at 10.

period of time.³⁴ Frontier similarly indicates it already retains six of the eight proposed data points.³⁵ Comcast does not object to reporting call termination data to the Commission quarterly, provided that call detail and other commercially sensitive information is treated as confidential and the Commission adopts other modifications. Vonage explains its new “Scorecard” program allows it to collect granular data on both domestic and international call completion and call quality.³⁶

The Rural Associations continue to believe that all of the call detail data proposed in the NPRM are necessary for Commission investigation purposes and are generally collected or reasonably available to providers. While it may be true in some cases that providers do not normally record some data items as part of their call records (*e.g.*, call jurisdiction, intermediate providers used to carry calls, whether calls are destined to “rural” LECs), there is no question that this information is or should be readily available to providers since it is typically used to calculate user bills and call verification as well as to confirm charges assessed by other providers for transport and termination.

³⁴ Level 3 at 7.

³⁵ Frontier at 8. Level 3 does suggest, however, that it may be impractical for it to record jurisdiction data on a call-by-call basis. Similarly, Frontier states that two of the requested data items (information on intermediate providers and whether the called party was assigned to a rural telephone company) are not industry standard, and would require changes to internal systems including new software to record and hardware to store the information. *Id.*

³⁶ Vonage at 4. Other providers suggest the Commission collect more information. Intelliquent, for example, recommends (at 2, 4) the Commission not only collect data from originating providers but also consider collecting information regarding – and from –intermediate carriers. Level 3 suggests (at 7) wholesale providers should record, for each call attempt, whether the call was handed back to the originating interexchange carrier, as this information will allow the Commission to accurately calculate call completion rates.

B. Samples and Voluntary Testing Will Not Help The Commission Achieve Its Objectives.

Several commenters support the idea of allowing providers to collect and report only samples of data.³⁷ They suggest it may be possible for some providers to derive sufficient insight into call completion performance from a series of as little as one-day snapshots.³⁸ This approach, however, is unlikely to produce an accurate picture of provider performance, will limit the Commission's ability to investigate consumer complaints, and can even encourage some providers to take measures to improve call completion statistics during sample periods but resume poor quality routing or call blocking once the sampling period ends. For example, providers, knowing they are being "graded" based on a period sample, would be incented to temporarily reroute traffic back to their own network and/or place calls on the networks of their most reliable (and expensive) underlying providers in order to deliver above average performance during the sample period. Even if providers resisted the temptation to change their practices during sample periods, samples are predominantly designed to estimate normal behavior and events, and can become inaccurate and useless when the underlying phenomena are sporadic or subject to deliberate manipulation.³⁹ Finally, because samples will capture data for only a fraction of uncompleted calls, they will diminish the Commission's ability to investigate individual consumer complaints regarding dropped or blocked calls that occur outside the sample window.

³⁷ *E.g.*, Verizon at 13; Sprint at 19; Frontier at 9.

³⁸ Verizon at 9.

³⁹ Information provided to the Rural Associations via various surveys and member company discussions indicate call completion issues are often sporadic. *See Associations' June 13, 2011 Letter* at 3; App. A, comments 7 and 11.

A few commenters also propose that the Commission accept a voluntary testing program, which they claim could resolve routing issues in near real-time, potentially before any consumers are impacted.⁴⁰ Recommendations to use the pending ATIS NGIIF/Rural Association voluntary joint test call project to monitor provider performance, in lieu of proposed reporting requirements, are contrary to the objective of the Commission's proposed data collection effort and could produce skewed results. The joint test call project was not designed to track call completion issues but rather to allow providers to discover call routing failures and conduct near real-time cooperative testing. The project requires originating providers to have foreknowledge of test line numbers. Further, the originating provider is responsible for both originating and documenting its test calls based on a pre-assigned test window. If the Commission did mandate such an approach, it is unlikely to attract ubiquitous originating provider participation. Further, RLECs would be understandably wary of participating in such "tests" if results can be easily manipulated to downplay real problems. As such, outcomes of this effort should not be used by the Commission to monitor ongoing provider performance.

USTelecom suggests that data collection and reporting should only be required when volumes of substantiated informal complaints indicate an investigation is warranted and such information is not currently being retained and/or reported.⁴¹ Reliance on consumer informal complaints to trigger retention and reporting requirement, however, will again hinder the Commission's ability to detect poor call completion performance and limit its ability to investigate complaints. It may also lead down a path of increasing consumer acceptance of poor quality communications and a general degradation of the U.S. communications network. As noted above, only a small percentage of call failures are reported by consumers; most are likely

⁴⁰ *E.g.*, Verizon at 6-7; CenturyLink at 8, 20.

⁴¹ USTelecom at 7.

never reported or identified. Further, Rural Association members have reported that consumers have grown increasingly frustrated from multiple years of call completion problems and therefore may fail to report repeated failures as time goes on.⁴² As such, informal complaints as an indicator of an individual provider's poor call completion performance are not reliable and will become even less reliable over time.

C. The Number of Call Attempts Per OCN Threshold Must be Small Enough to Detect Call Completion Problems With Small Rural Carriers.

Several providers argue that the number of call attempts necessary to trigger the reporting requirement should be increased from 100 call attempts per OCN to a minimum of 1,000.⁴³ Increasing the call attempt threshold per OCN, however, would not allow the Commission to achieve its stated goals and will restrict the Commission's ability to detect and investigate failures in calls destined to small rural LECs. The Rural Associations pointed out in this regard that even the proposed 100-call attempt per-month threshold will almost certainly result in the exclusion of relatively small RLECs (and perhaps some larger ones as well) from many originating providers' quarterly reports.⁴⁴ Such small rural ILECs are often the most remote and isolated carriers, located at the end of lengthy transport lines, that certain long distance providers find most expensive to serve and to which they are most likely to "drop" calls. Increasing this threshold to 1,000 or greater will exclude reporting for even more RLECs and increase the number of performance shortcomings that do not make it on to the Commission's radar screen.

⁴² *Associations' June 13, 2011 Letter* at 3.

⁴³ Frontier (at 7) suggests increasing the number of attempts necessary to trigger the reporting requirement from 100 call attempts per OCN to a minimum of 1000 would help buffer against results that falsely indicate the presence of rural call completion failures by decreasing the value that any one customer who, for example, may not have voicemail, plays in the calculation. Level 3 (at 15) voiced similar concerns.

⁴⁴ Rural Associations at 9-11.

And, as Level 3 notes, it is no more burdensome to maintain data on all carriers to whom calls are completed than on just those carriers to whom an IXC completes 100 or more calls.⁴⁵

To address concerns over statistical anomalies caused by end-user behavior, such as ring-no-answer, the Associations and several other commenters recommended the Commission require reporting of the Network Effectiveness Ratio (NER).⁴⁶ Collecting both CAR and NER data will allow the Commission to differentiate failures associated with end-user behavior and the network itself.

D. Clarification of the Call Answer Rate Calculation May be Required.

A number of commenters suggest changes to how “call completion” is defined and how the call answer rate is computed. For example, Frontier notes it does not currently retain records of call attempts to an ‘unallocated’ number and call attempts not answered and showing a “User” category release cause code because with SS7 technology neither calls dialed to an unassigned number nor “busy” calls should leave the originating office.⁴⁷ Others argue either for or against the inclusion of certain types of calls in the calculation (*e.g.*, calls to invalid numbers, telemarketing calls or autodialer calls, calls which fail after reaching an access tandem, calls which fail because of inaccurate LERG data.)⁴⁸ Still other commenters recommend that for purposes of calculating the call answer rate, call attempts that are handed back to the upstream provider should be excluded from data collection and reporting to avoid double-counting.⁴⁹

⁴⁵ Level 3 at 2.

⁴⁶ Rural Associations at 15. *See also* NARUC at 12; Time Warner at 10; and Comcast at 9.

⁴⁷ Frontier at 6-7.

⁴⁸ *E.g.*, Sprint at 20-21; Verizon at 13.

⁴⁹ *E.g.*, Windstream at 4.

It may be reasonable for the Commission to clarify that some types of call attempts, such as those handed back to the upstream provider, should be excluded from reporting requirements or (in the case of calls handed back to the upstream provider) counted as only one attempt. Such exclusions or clarifications should only be made if all providers are known to have the ability to omit particular calls or call categories. Otherwise, it may not be possible for the Commission to monitor comparative performance levels with any assurance of accuracy.⁵⁰

E. The Commission Should Clarify Its Definition of “Originating Facilities-Based Long-Distance Provider” to Avoid Confusion Over Which Entity Has the Reporting Obligation.

In initial comments, the Rural Associations suggested that all originating facilities-based long-distance providers that have the ability to determine call routing should be required to report, including interconnected VoIP providers and CMRS providers.⁵¹ Cbeyond, Earthlink, *et al.* also note the Commission does not define “facilities-based” in the NPRM and question if the Commission intends to apply this term to situations where a LEC resells long-distance service provided by another carrier.⁵² They similarly suggest the Commission should answer this question by treating the wholesale long-distance provider as the first facilities-based provider.

The Rural Associations agree the Commission should make clear its record keeping and reporting requirements will apply to providers that “own” the calls, and are in the best position to make choices with respect to downstream call routing. The Commission should therefore consider refining and clarifying its definition of “facilities-based originating long-distance providers” to avoid confusion in identifying which party bears the ensuing obligations and how

⁵⁰ Also, as noted above, collecting NER data should resolve many issues associated with “user cause” failures in any event.

⁵¹ Rural Associations at 7-8.

⁵² Cbeyond, Earthlink, *et al.* at 2.

the data can be efficiently analyzed by the Commission. Carriers or other providers that might be facilities-based in the local context (*i.e.*, owning the local loop and switching or routing facilities used to originate and terminate calls), but that merely re-sell another provider's wholesale long-distance service (or use another provider's IP-based routing service to transmit long-distance calls), have little ability to control the routing of calls once handed off to such wholesalers, and have little or no access to the performance information that the Commission seeks. The Commission should accordingly make clear that it seeks information specifically from those facilities-based originating providers (whether TDM or IP-based) with the ability to choose the call path for purposes of routing long-distance calls.⁵³

Finally, the Rural Associations note that some commenters support the Commission's proposal to exempt small providers from reporting and recordkeeping rules.⁵⁴ The Rural Associations agree the Commission should consider excluding originating long-distance providers with fewer than 100,000 retail long-distance customers from its proposed data retention and reporting requirements, as available evidence suggests the majority of rural call completion complaints are associated with very large long distance providers or VoIP providers.⁵⁵

⁵³ Bandwidth.com (at 10) suggests "Rural LECs could help manage and eliminate rural call completion problems as the industry transitions to all IP networks by permitting service providers to establish direct IP interconnections." It should be noted, however, that RLECs currently have – and have had for years – tariff provisions in place to permit such interconnection in short order. *See* NECA Tariff F.C.C. No. 5, Access Service, Trans. No. 1257 (filed Nov. 13, 2009) (effective Dec. 28, 2009) (NECA IP Gateway filing).

⁵⁴ Cbeyond, Earthlink, *et al.* at 3.

⁵⁵ In establishing such a threshold the Commission should make clear that wholesale providers who do not serve retail subscribers but nevertheless carry substantial volumes of long-distance traffic would not be exempt from reporting requirements. For example, the Commission could establish an alternative revenue threshold, set at a level designed to assure adequate information is obtained from larger wholesale providers.

V. SAFE HARBORS SHOULD BE ESTABLISHED, IF AT ALL, ONLY AFTER CALL COMPLETION PROBLEMS ARE RESOLVED AND MUST BE BASED ON ACTUAL DATA AND “EARNED” RELIEF, NOT SUPPOSITION.

The Rural Associations neither seek nor desire regulation for the sake of regulation.

However, as Acting Chairwoman Clyburn and all four other Commissioners (at the time the *NPRM* was adopted) recognized, deliberate non-completion of calls to rural areas is a serious violation of the Communications Act and Commission rulings that is causing grave economic, social and public safety injury, and that must be resolved expeditiously.⁵⁶ Such expeditious resolution requires that priority be given to collecting rural call completion data, determining routes over which call failures are occurring, identifying bad actors, and imposing sanctions and penalties sufficient to end the unlawful practices. Only after the Commission verifies the incidences and sources of the rural call completion problems and makes substantial progress in curtailing them, will it be in a better position to devise a reasonable and equitable safe harbor or conditional exemption that can reduce the reporting and recordkeeping obligations of law-abiding service providers that do not engage in or allow non-completion of calls to rural areas. “Safe harbors” are thus premature and create substantial risks of creating loopholes and end-runs that will deprive the Commission and interested parties of meaningful data needed to address the problem, and may also permit bad actors to evade detection as they continue to unlawfully refuse to terminate legitimate calls.

Most long distance service providers submitting comments in this proceeding appear more interested in reducing their recordkeeping and reporting costs than in reducing rural call completion problems. AT&T urges the Commission to retain the proposed safe harbors in its

⁵⁶ See separate Statements of Chairman Genachowski, and Commissioners Pai, Roseworcel, Clyburn, and McDowell, attached to the *NPRM*.

final rules, and particularly supports the first intermediate provider safe harbor.⁵⁷ While the Associations support industry-wide adoption of best practices for long distance routing, there is no evidence contractual management of underlying providers by itself can successfully address most of the causes of call blocking or call failure/quality issues. Moreover, in comments other carriers noted the practice of limiting the number of underlying carriers may also have unintended consequences. For example, CenturyLink notes that more restrictive constraints on the use of intermediate providers would limit its ability to ensure service continuity in the event of network disruptions and excessively high call volumes.⁵⁸

Other commenters including NARUC and NASUCA agree with the Rural Associations that “safe harbors” are not ripe for development at this time.⁵⁹ With respect to the suggested “Managing Intermediate Provider Safe Harbor,”⁶⁰ NARUC correctly points out there is no reported evidence that rural call completion issues are eliminated or minimized when a long distance provider uses two or fewer intermediate providers, or that call completion issues are resolved more efficiently and effectively when a long distance provider reveals the identities of its intermediate providers to the Commission and affected rural carriers.⁶¹ NARUC also notes that the current processes used by long distance providers to monitor the performance of their intermediate providers have not proved effective in eliminating rural call completion problems.⁶²

⁵⁷ AT&T at 3.

⁵⁸ See CenturyLink at 17. Time Warner (at 10) also notes limiting handoffs may reduce its ability to complete calls (“there are instances in which a provider may need to rely on more than one additional intermediate provider—most notably, in times of network congestion, when it may be necessary to route traffic to an alternate provider to ensure that it is completed.”).

⁵⁹ NARUC at 10-11; NASUCA at 22-23.

⁶⁰ *NPRM* ¶ 33.

⁶¹ NARUC at 11.

⁶² *Id.*

NASUCA likewise agrees that limiting the number of intermediate providers, disclosing identities of intermediate providers to the Commission and affected rural carriers, or having processes in place to monitor the intermediate provider's performance will not necessarily provide assurance of improvement in intermediate providers' sub-performance.⁶³ Regardless of contractual provisions and monitoring processes, NASUCA recognizes the risk that long distance providers will weigh their economic convenience against the interests of rural consumers, and take no effective action.⁶⁴ Moreover, NASUCA points out that this safe harbor will likely embroil the Commission and rural carriers in disputes regarding the impact of non-disclosure provisions of agreements between long distance providers and their intermediate providers that will complicate and delay efforts to identify and stop deliberate call dropping practices.⁶⁵

NASUCA concludes that "this safe harbor makes no sense in terms of solving the serious and widespread problem at issue here . . . [and] should not be adopted."⁶⁶ The Rural Associations agree that the Commission should focus instead upon collecting comprehensive call completion data for at least a year so that it can make a reasonable and accurate determination regarding the long distance providers that have significant rural call completion problems, and the nature and types of intermediate provider arrangements that cause or contribute to such problems. Should the Commission find after that period that such a safe harbor is warranted – based upon performance that can be attributed specifically and directly to such management practices – then

⁶³ NASUCA at 22.

⁶⁴ *Id.* at 22-23.

⁶⁵ *Id.* at 23.

⁶⁶ *Id.*

it might be said at that time that a provider employing such practices has “earned” a safe harbor.⁶⁷

The suggested “Monitoring Performance Safe Harbor” is equally premature, even more risky in terms of creating loopholes, and devoid of any factual predicate. No one knows whether there is an actual differential in call answer rates between rural and non-rural areas, and, if so, in what direction it lies. As NASUCA indicates, the proposed “2 percent less” and “3 percent less” thresholds for this safe harbor “are not reasonable and appropriate, because they accept that a differential in call completion between calls to rural carriers and calls to non-rural carriers is reasonable and appropriate.”⁶⁸ NASUCA observes accurately that there is neither any evidence nor any reasonable rationale to justify such wholly presumptive differentials.

NARUC demonstrates there is no statutory authority or factual support for any call completion performance differential (whether 2%, 3%, 5% or any other arbitrary level) between rural and non-rural areas. It correctly states that section 251(a) of the Act is an absolute standard that does not distinguish between traffic that terminates in rural versus non-rural areas, and it does not authorize deliberate call completion failures, nor permit the establishment of different permissible call completion performance rates for different parts of the country.⁶⁹ NARUC notes further that, even if the Commission could find an appropriate statutory rationale for establishing discriminatory call completion standards between rural and non-rural areas, it would “still have to find in the record evidence of a non-rectifiable technical issue occurring mainly in rural areas

⁶⁷ If customer complaints against such a provider rise again, however, the Commission will need to revoke that provider’s safe harbor and order full call tracking and reporting again.

⁶⁸ *Id.* at 24. [emphasis in original]

⁶⁹ NARUC at 9.

that supports a 2 percent discriminatory differential and also set an acceptable threshold for non-rural call completion as a basis for comparison.”⁷⁰

In sum, both of the suggested “safe harbors” are wholly premature at this time and wholly unsupported by applicable law or demonstrable facts. Whereas the Commission can and should enforce its call completion requirements immediately against those found to be blocking or dropping calls, it needs to collect comprehensive call completion data for at least a year before it will have the information necessary to design reasonable “safe harbors” capable of distinguishing law-abiding long distance providers and exempting them from certain reporting or recordkeeping requirements.

Rather than trying to design effective and equitable “safe harbors” that are resistant to evasion and abuse, the Rural Associations suggest the Commission investigate that portion of COMPTEL’s proposal that would exempt originating providers from further reporting requirements if and when they “earn” it – that is, when the data filed for four consecutive quarters demonstrates that their call routing practices do not entail dropping, blocking, or degradation of quality for calls to rural areas at any level below that for other parts of the country.⁷¹ Recordkeeping requirements are essential for performance monitoring, and should be kept in place so that call completion complaints and other matters can be investigated. However, reporting and record retention requirements can be eased for long distance providers that are able to show they have essentially eliminated call non-completion problems on their networks for a year or more. As proposed by the Missouri Public Service Commission, any such exemption or relief for good behavior should be conditioned upon a continuing absence of significant call completion problems and full and prompt cooperation in investigating and remedying any call

⁷⁰ *Id.*

⁷¹ COMPTEL at 9.

completion complaints, and should be revocable via a streamlined and expedited process if significant call blocking or dropping problems recur.⁷²

Finally, the Rural Associations agree with Cbeyond regarding the importance of inter-carrier reporting and troubleshooting.⁷³ To the extent that the Commission can require long distance providers and their intermediate providers to publicly designate knowledgeable and readily accessible contact representatives, and to communicate and cooperate with rural carriers to identify and resolve call completion issues as they arise, the rural call completion problem and its attendant recordkeeping and reporting requirements may be able to be reduced or eliminated at an earlier date to the benefit of all.

VI. THE COMMISSION SHOULD EXPAND ITS PROPOSED RING-BACK RULE.

The Rural Associations believe that customer confusion can be avoided only if ring signaling integrity requirements provide an accurate indication of call status to telephone users.⁷⁴ Though the Commission specifically sought comment on rules that would prevent “false ring back,” the rules should address all messages and tones that could lead to customer confusion and mask call blocking and other transmission problems. The Rural Associations accordingly support Level 3’s proposal that the rule should apply to all IXC’s handling a particular call, including intermediate carriers. As the company states, “such tones should be generated only by the terminating carrier, or by the originating carrier when signaled by the terminating carrier.”⁷⁵ The Rural Associations also support the requirement for intermediate carriers to pass through,

⁷² Missouri PSC at 6-7.

⁷³ Cbeyond, Earthlink, *et al.* at 4.

⁷⁴ *See also* Comcast at 14; CenturyLink at 20; COMPTTEL at 10; Blooston Rural Carriers at 7; New Jersey Division of Rate Counsel at 11.

⁷⁵ Level 3 at 3.

unaltered, any signaling information that indicates the terminating carrier is alerting the called party, as well as any audio tone or announcements provided by the terminating carrier. As Hypercube states, “[t]his rule should be applied across all providers that allow end users to make voice calls regardless of license, function, or authority.”⁷⁶

The only parties to advocate against a rule prohibiting false ring-back are Vonage and the VON Coalition. Vonage argues that prohibiting false ringing could have unintended consequences, such as having extended silence after the call is placed and increased hang-ups by the calling party.⁷⁷ The Rural Associations agree the Commission should address post-dial delay problems. However, only one party benefits when the calling party hears ringing before the call is actually set up - the originating provider. If the caller hears ringing and does not hang up, the call might eventually get through and be answered, and the calling party will not be aware that there is a problem with the service it receives from its originating provider. In other words, while it may be in Vonage’s best interests to continue the practice of sending false ring-back tones, it is a practice that at best misleads the consumer and at worst could lead a consumer with an emergency call to keep waiting for an answer, believing that the call is going through, when it may never go through. Silence lets the consumer know that he should hang up and try again.

The VON Coalition questions the Commission authority to prevent customers from hearing false ring-back signals, alleging there is a lack of evidence showing that data collected from interconnected VoIP providers is essential to “effectuate the Commission’s obligations with respect to common carriers.”⁷⁸ Data submitted by the Rural Associations clearly demonstrate,

⁷⁶ Hypercube at 5.

⁷⁷ Vonage at 8-11.

⁷⁸ *Id.* at 5.

however, that calls from interconnected VoIP providers constitute a significant portion of the current crises.⁷⁹

The VON Coalition goes on to invoke “innovative [VoIP] service offering[s]” as the reason VoIP providers should not be required to conform to any rule regarding ring-back tones.⁸⁰ Yet, it is not clear what “innovation” is spurred by confusing consumers about when calls are ringing on the receiving end, or conversely, what “innovation” is stymied by requiring VoIP providers to comport with the expectations and understandings of the consumers on each side of a communication. Moreover, as the Rural Associations noted in initial comments, substantial precedent exists clearly establishing that the Commission’s ancillary authority permits it to apply regulations to all providers utilizing purportedly enhanced technologies where necessary to satisfy essential public policy objectives and fulfill duties under the Act.⁸¹ The Commission should similarly proceed here to promulgate rules as needed to require such providers ensure consumers hear ringing only when calls set up, consistent with long time telephone industry

⁷⁹ See *Associations’ November 15, 2012 Letter*, attach.

⁸⁰ VON Coalition at 6

⁸¹ Rural Associations at 8, n.20 (citing *e.g.*, *Communications Assistance for Law Enforcement Act and Broadband Access and Services*, ET Docket No. 04-295, RM-10865, First Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd. 14989 (2005) ¶ 42; *Telephone Number Requirements for IP-Enabled Services Providers*, WC Docket No. 07-243, *Local Number Portability Porting Interval and Validation Requirements*, WC Docket No. 07-244, *IP-Enabled Services*, WC Docket No. 04-36, *Telephone Number Portability*, CC Docket No. 95-116, *CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues Final Regulatory Flexibility Analysis Numbering Resource Optimization*, CC Docket No. 99-200, Report and Order, Declaratory Ruling, Order on Remand and Notice of Proposed Rulemaking, 22 FCC Rcd. 19531 (2007) ¶ 28; *Universal Service Contribution Methodology; Federal-State Joint Board on Universal Service, et al.*, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd. 7518 (2006) ¶¶ 36, 53, 55 (*Interim USF Order*); See *IP-Enabled Services*, WC Docket No. 04-36, *E911 Requirements for IP-Enabled Service Providers*, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd. 10245 (2005), Statement of Kevin J. Martin.

practice and customer expectations, and to ban all providers from sending tones and messages that mask call blocking and other transmission problems.

VII. CALL COMPLETION DATA SHOULD NOT BE KEPT CONFIDENTIAL.

Commenters generally agreed with the Rural Associations that call completion data should be made publicly available. This creates a more transparent marketplace, allowing consumers and IXC resellers to compare originating providers' performance. As the New Jersey Division of Rate Counsel points out, "[i]f a consumer. . . can choose a long distance provider based on the provider's performance regarding call completion because of a desire to reach a sister in a rural area of the country, long distance providers may have an incentive not to use poor performing intermediate providers and practices."⁸² State Commissions also made the point that state regulators need access to the information in order to investigate the phenomena, obtain an accurate diagnosis of the problem, and implement a solution.⁸³

No commenter demonstrates any compelling reasons why the data should be afforded confidential treatment.⁸⁴ Though it is understandable that a provider with poor performance would seek confidential treatment of its data, call performance data is not a trade secret, or confidential business or financial information of a type normally held confidential. Just as a consumer has the ability to choose a washing machine based on performance and reliability data, or an airline using "on time" flight data, so too should a consumer have access to information enabling him or her to choose long distance providers based on ability to deliver promised services. If anything, lifting the veil of confidentiality and arming the consumer with the best

⁸² New Jersey Division of Rate Counsel at 9.

⁸³ California PUC at 4, Missouri PSC at 5.

⁸⁴ *See, e.g.*, CenturyLink at 12; Vonage at 8.

possible information may lead providers to “self-regulate” their behavior and thereby minimize the need for formal enforcement actions by the Commission.

VIII. CONCLUSION.

Commenters in this proceeding have recognized the desperate need for the FCC to address our national call completion crisis promptly and comprehensively. The Rural Associations urge the Commission to adopt the reporting requirements and call signaling rules proposed in the NPRM and apply them to all providers of voice calling, regardless of technology. The burdens imposed on providers by such reporting rules are clearly outweighed by the costs to consumers and businesses when calls are not completed. The established severity and extent of call completion problems also demonstrate why the safe harbors proposed in the NPRM are premature and should not be implemented. If any safe harbor or reporting exemption is established, it should only be earned through a sustained demonstration of compliance by providers over a reasonable period of time following adoption of the reporting requirements.

As discussed above, there is widespread support for adoption and expansion of the Commission’s proposed signal integrity rule, which would prevent calling parties from hearing

false ring-back tones or other confusing or misleading sounds or messages. Finally, the record does not support treatment of call completion data gathered by the Commission as confidential.

Respectfully submitted,

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