

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

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

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: February 4, 2013**

**Released: February 7, 2013**

**Comment Date: (30 days after date of publication in Federal Register)**

**Reply Comment Date: (45 days after date of publication in Federal Register)**

By the Commission: Chairman Genachowski and Commissioners McDowell, Clyburn, Rosenworcel, and Pai issuing separate statements.

**I. INTRODUCTION**

1. In this Notice of Proposed Rulemaking (Notice), we seek comment on rules to help address problems in the completion of long-distance telephone calls to rural customers. Retail long-distance providers, such as wireless providers, cable companies, interexchange carriers (IXCs), local exchange carriers (LECs), and providers of Voice over Internet Protocol (VoIP) services, often employ intermediate providers to carry long-distance calls to their destination.<sup>1</sup> Some of these intermediate providers offering wholesale call delivery services may be failing to deliver a significant number of calls to rural telephone company customers,<sup>2</sup> and evidence indicates that the retail long-distance providers may not be adequately examining the resultant rural call completion performance.

<sup>1</sup> 47 C.F.R. § 64.1600(f) (defining “intermediate provider” as “any entity that carries or processes traffic that traverses or will traverse the PSTN at any point insofar as that entity neither originates nor terminates that traffic”). Some intermediate providers are also referred to as “least cost routers.”

<sup>2</sup> See, e.g., Letter from Shirley Bloomfield, Chief Executive Officer, National Telecommunications Cooperative Association, to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 at 1, 3 (filed Sept. 20, 2011) (*September 2011 NTCA Letter*); Letter from James Bradford Ramsey, Counsel for the National Association of Regulatory Utility Commissioners, to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 at 2 (filed Sept. 29, 2011) (*September 2011 NARUC Letter*); Letter from Tim Schram, Chairman, Nebraska Public Service Commission, Kevin Gunn, Chairman, Missouri Public Service Commission, Ellen Anderson, Chair, Minnesota Public Utilities Commission, Travis Kavulla, Chairman, Montana Public Service Commission, Gary Hanson, Chairman, and Chris Nelson, Vice Chairman, South Dakota Public Utilities Commission, John Quackenbush, Chairman, Orjaker Isiogu, Commissioner, and Greg White, Commissioner, Michigan Public Service Commission, and Christopher Petrie, Secretary and Chief Counsel, Wyoming Public Service Commission, to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 at 2 (filed Dec. 1, 2011) (*December 2011 State PSCs Letter*); see also 47 U.S.C. § 153(44) (2006) (defining “rural telephone company”).

2. Completion rates of long-distance calls to rural telephone company service areas are frequently poor, even where overall performance of the intermediate provider appears acceptable.<sup>3</sup> The problems manifest themselves in lengthy periods of dead air on the calling party's end after dialing a number, audible ringing tones on the calling party's end when the called party's telephone never rings at all, false busy signals, inaccurate intercept messages, and the inability of one or both parties to hear the other when the call does go through.<sup>4</sup> This causes rural businesses to lose customers, cuts families off from their relatives in rural areas, and creates potential for dangerous delays in public safety communications in rural areas.<sup>5</sup>

3. In this proceeding, we will consider measures to improve the Commission's ability to monitor the delivery of long-distance calls to rural areas and aid enforcement action in connection with providers' call-completion practices as necessary. We seek comment on reporting and data retention requirements that would allow the Commission to review a long distance provider's call performance to specific areas. These measures would strengthen the Commission's ability to ensure a reasonable and nondiscriminatory level of service to rural areas. We also seek comment on how to minimize the burden of compliance with these proposed rules, particularly for originating providers whose call-routing practices do not appear to cause significant call-completion problems.

## II. BACKGROUND

4. In filings with the Commission and in presentations at the Commission's October 18, 2011 workshop on rural call routing and termination problems,<sup>6</sup> several entities identified a number of rural call completion issues and asked the Commission to address them promptly.<sup>7</sup> Trade associations that represent rate-of-return carriers<sup>8</sup> (collectively, "rural associations") and several state utility commissions describe the call-termination issues affecting rural areas as serious and widespread.<sup>9</sup> They emphasize that the inability of businesses, consumers, and government officials to receive calls compromises the integrity and reliability of the public switched telephone network (PSTN) and threatens the public safety,

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<sup>3</sup> See *Developing a Unified Inter-carrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers*, CC Docket No. 01-92, WC Docket No. 07-135, Declaratory Ruling, 27 FCC Rcd 1351, 1356, para. 12 n.37 (2012) (*2012 Declaratory Ruling*).

<sup>4</sup> See, e.g., Letter from Richard A. Askoff, Counsel for the National Exchange Carrier Association (NECA), Michael Romano, Counsel for National Telecommunications Cooperative Association (NTCA), Stuart Polikoff, Vice President of Regulatory Policy and Business Development, Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and Derrick Owens, Director of Government Affairs, Western Telecommunications Alliance, to Theresa Z. Cavanaugh and Margaret Dailey, Investigations and Hearings Division, Enforcement Bureau, FCC (filed June 13, 2011) (*June 2011 NECA, et al. Letter*).

<sup>5</sup> See, e.g., *September 2011 NTCA Letter* at 2-3.

<sup>6</sup> See *FCC Announces Agenda for October 18 Rural Call Completion Workshop*, Public Notice, 26 FCC Rcd 14351 (2011) (*Workshop Public Notice*), recording available at <http://www.fcc.gov/events/rural-call-completion-workshop> (last accessed Jan. 29, 2013).

<sup>7</sup> See, e.g., Letter from Colin Sandy, Counsel for the National Exchange Carrier Association (NECA), Jill Canfield, Counsel for National Telecommunications Cooperative Association (NTCA), Steve Pastorkovich, Counsel for Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO), and Derrick Owens, Director of Government Affairs, Western Telecommunications Alliance, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-135, 11-39, CC Docket No. 01-92 (filed May 21, 2012) (*May 2012 NECA, et al. Letter*); *June 2011 NECA, et al. Letter*; *September 2011 NTCA Letter*; *December 2011 State PSCs Letter*.

<sup>8</sup> A rate-of-return carrier is "any incumbent local exchange carrier not subject to price cap regulation." 47 C.F.R. § 54.5; see also 47 C.F.R. § 61.3(ff) (defining price cap regulation).

<sup>9</sup> See, e.g., *September 2011 NARUC Letter* at 1 (noting that "[o]ne hundred and seventy six rural incumbent local exchange companies in 35 States have reported call termination issues for both voice calls and faxes").

homeland security, consumer welfare, and economic well-being of rural America.<sup>10</sup> These entities claim that call-termination problems continue to increase<sup>11</sup> and that the result is the “effective disconnection of rural consumers from many other parts of the PSTN.”<sup>12</sup>

5. As evidence of the problem, rural associations report that rate-of-return carriers serving rural areas are reporting an alarming increase in complaints from their customers stating that long-distance calls and faxes are not reaching them or that call quality is poor.<sup>13</sup> Indeed, these rural associations state that 80 percent of rural carriers responding to one survey reported problems,<sup>14</sup> and rural customer reports of problems receiving calls increased by more than 2000 percent in the twelve-month period from April 2010 to March 2011.<sup>15</sup> In May 2012, the rural associations conducted a second call-completion study based on over 7400 call attempts and reported that, while there was some improvement in rural areas from 2011 to 2012, the incompleteness rate in rural areas was still 13 times higher in rural areas than in nonrural areas.<sup>16</sup> In November 2012, a third survey of rural carriers indicated that the problems with completing calls to rural areas were continuing at an alarming rate.<sup>17</sup>

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<sup>10</sup> See, e.g., *June 2011 NECA, et al. Letter* at 3–4 (noting that rural telecommunications providers have reported instances of small businesses losing tens of thousands of dollars in sales because their customers cannot reach them, families being unable to communicate and check on the safety and well-being of their loved ones, a public safety notification system in South Dakota intended to notify parents of school alerts being unable to complete calls placed from a distant location, and a state police barracks being unable to receive long-distance calls); *September 2011 NARUC Letter* at 1–3 (noting that rural telecommunications providers have also reported complaints from a hospital having difficulty contacting patients); *September 2011 NTCA Letter* at 2–3; *September 2011 NTCA Letter* at 1; *December 2011 State PSCs Letter* at 1–3.

<sup>11</sup> See, e.g., *June 2011 NECA, et al. Letter* at 4 (stating that call completion problems are “widespread and increasing”); *September 2011 NARUC Letter* at 1 (stating that “it appears call routing and termination problems are again on the rise”); *September 2011 NTCA Letter* at 2 (stating that “there is a troubling recent increase in reports that calls are failing to route properly or arrive at rural networks,” and that “call routing and termination problems appear to be increasing once again”).

<sup>12</sup> *September 2011 NTCA Letter* at 3.

<sup>13</sup> See, e.g., *June 2011 NECA, et al. Letter* at 3–4. The rural associations also note that the problem is likely under-reported because the parties called are likely not informed of all of the instances when calls have failed to reach them and may not always report those that they do discover. *Id.* at 3.

<sup>14</sup> See Letter from Michael Romano, Counsel for the National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-135, 11-39, CC Docket No. 01-92, at 7 (filed Mar. 11, 2011) (stating that 80 percent of carriers responding to NTCA’s survey reported termination problems, 28 percent reported that persistent concerns continue, and 46 percent reported ongoing intermittent issues).

<sup>15</sup> See *June 2011 NECA, et al. Letter* at 3–4 & App. A (noting that “[r]eports with respect to such troubles increased by over 2000 percent over a recent twelve month period (from 78 in April 2010 to 1,811 in March 2011)”). A sizeable portion of these rural telecommunications providers have told the Commission that “the problems continue to arise intermittently despite efforts to ‘troubleshoot’ and resolve problems when they are detected.” *Id.* at 3.

<sup>16</sup> *May 2012 NECA, et al. Letter* at 1-2; see also Letter from James Bradford Ramsay, Counsel for National Association of Regulatory Utility Commissioners, to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 at 2 (filed Sept. 26, 2012) (*September 2012 NARUC Letter*).

<sup>17</sup> See Letter from Colin Sandy, Government Relations Counsel, National Exchange Carrier Association, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-135, 11-39, CC Docket No. 01-92 at 1–2 (filed Nov. 15, 2012) (“The survey found that despite consumers’ growing frustration with persistent problems receiving calls and their declining likelihood to report occurrences, volumes of complaints related to call completion are steady or rising in 62 percent of respondents’ service areas when comparing complaints during the months of March 2012 through September 2012 and a previous testing period of August 2011 through February 2012.”).

6. Call completion problems appear to occur particularly in rural areas served by rate-of-return carriers, where the costs that long-distance providers incur to complete calls are generally higher than in nonrural areas. To minimize call termination charges, long-distance providers often use intermediate providers that offer to deliver calls to specified terminating providers at comparatively low cost, usually within defined service quality parameters. 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.<sup>18</sup>

7. *Previous Commission Actions.* The Commission has stated that carriers are prohibited from blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges.<sup>19</sup> Noting that the ubiquity and reliability of the nation's telecommunications network is of paramount importance to the explicit goals of the Act, the Wireline Competition Bureau (Bureau) issued a declaratory ruling in 2007 to clarify that no carriers, including interexchange carriers, may block, choke, reduce, or restrict traffic in any way.<sup>20</sup>

8. In September 2011, the Commission created the Rural Call Completion Task Force to address and investigate the growing problems associated with calls to rural customers.<sup>21</sup> On October 18, 2011, the Task Force held a workshop to identify specific causes of the problem and discuss potential solutions with key stakeholders.<sup>22</sup>

9. In its November 2011 Order reforming intercarrier compensation and the Universal Service Fund, the Commission again emphasized its longstanding prohibition on call blocking.<sup>23</sup> The Commission reiterated that call blocking has the potential to degrade the reliability of the nation's telecommunications network and that call blocking harms consumers.<sup>24</sup> The Commission also made clear

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<sup>18</sup> See, e.g., *June 2011 NECA, et al. Letter* at 3; *September 2011 NTCA Letter* at 3; Letter from David Lewis, Chief Executive Officer for ANPI, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 03-109, 05-337, 07-135, 10-90, CC Docket Nos. 96-45, 01-92, WT Docket No. 96-45, GN Docket No. 09-51 at 1 (filed Dec. 21, 2012) (stating that least cost routing carriers offer terminating services at low rates, and that some least cost routing carriers may provide inferior service for a low rate).

<sup>19</sup> See, e.g., *Access Charge Reform*, CC Docket No. 96-262, FCC 01-146, Seventeenth Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, 9932-33, para. 24 (2001); *Blocking Interstate Traffic in Iowa*, FCC 87-51, Memorandum Opinion and Order, 2 FCC Rcd 2692 (1987).

<sup>20</sup> *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629 (WCB 2007).

<sup>21</sup> See *FCC Launches Rural Call Completion Task Force to Address Call Routing and Termination Problems in Rural America*, News Release (rel. Sept. 26, 2011).

<sup>22</sup> See *Workshop Public Notice*, *supra* n.6.

<sup>23</sup> *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform—Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-32, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17903, 18028-29, paras. 734, 973-974 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom.* In re: *FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011).

<sup>24</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17903, para. 734. In a January 5, 2012 blog post on the Commission's web site, the chiefs of the Wireline Competition Bureau and Public Safety and Homeland Security Bureau described ways that the Commission has been working on rural call completion issues. Sharon Gillett and Jamie Barnett, *New Year Solutions for Rural Call Completion Problems*, FCC (Jan. 5, 2012), available at <http://www.fcc.gov/blog/new-year-solutions-rural-call-completion-problems> (last accessed Jan. 29, 2013).

that the general prohibition on call blocking by carriers applies to VoIP-PSTN traffic.<sup>25</sup> Finally, the Commission prohibited call blocking by providers of interconnected VoIP services and providers of “one-way” VoIP services.<sup>26</sup>

10. In February 2012, the Wireline Competition Bureau issued a declaratory ruling to clarify the scope of the Commission’s prohibition on blocking, choking, reducing, or restricting telephone traffic in response to continued complaints about rural call completion issues from rural associations, state utility commissions, and consumers.<sup>27</sup> The *2012 Declaratory Ruling* made clear that rural call routing practices that lead to call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201 of the Communications Act of 1934, as amended (the Act)<sup>28</sup> or may violate the carriers’ section 202 duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services.<sup>29</sup> The *2012 Declaratory Ruling* also noted that carriers may be subject to liability under section 217 of the Act for the actions of their agents or other persons acting for or employed by the carriers.<sup>30</sup> The Bureau stated that the practices causing rural call completion problems “adversely affect the ubiquity and reliability of the nation’s telecommunications network and threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network.”<sup>31</sup>

11. In addition to conducting ongoing investigations of several long-distance providers, the Commission has also been addressing daily operational problems reported by rural customers and carriers so that incoming long-distance calling to rural telephone company customers is promptly restored. We have established dedicated avenues for rural customers and carriers to inform the Commission about these call completion problems. A web-based complaint intake focuses on the rural call completion problems of residential and business customers, instructs them on how to file complaints with the Commission, and links to the Commission’s standard 2000B complaint form.<sup>32</sup> A dedicated email intake expedites the ability of rural telephone companies to alert the Commission of systemic problems receiving the calls from a particular originating long-distance provider and facilitates provider-to-provider resolution.

12. *Other Actions.* In December 2012, the Oregon Public Utilities Commission adopted additional Conditions of Certificates of Authority requiring a certificate holder to take reasonable steps to

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<sup>25</sup> *Id.* at 18028-29, paras. 973-974.

<sup>26</sup> *Id.* at 18029, para. 974; *see also* 47 C.F.R. § 9.3 (defining interconnected VoIP service as a service that, *inter alia*, allows users “to receive calls that originate on the [PSTN] and to terminate calls to the [PSTN]” (emphasis added)); *USF/ICC Transformation Order*, 26 FCC Rcd at 18029, para. 974 (noting that one-way VoIP services allow customers to receive calls from, or place calls to, the PSTN, but not both).

<sup>27</sup> *2012 Declaratory Ruling*, 27 FCC Rcd 1351.

<sup>28</sup> 47 U.S.C. § 201 (2006) (“All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful . . .”).

<sup>29</sup> 47 U.S.C. § 202 (2006) (“It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services . . .”).

<sup>30</sup> *2012 Declaratory Ruling*, 27 FCC Rcd at 1352, para. 4; 47 U.S.C. § 217 (2006).

<sup>31</sup> *2012 Declaratory Ruling*, 27 FCC Rcd at 1355, para. 11.

<sup>32</sup> *See Rural Call Completion: Problems with Long Distance or Wireless Calling to Rural Areas*, FCC ENCYCLOPEDIA, <http://www.fcc.gov/encyclopedia/problems-long-distance-or-wireless-calling-rural-areas> (last accessed Jan. 29, 2013).



ensure that it does not adopt or perpetuate intrastate routing practices that result in lower-quality service to an exchange with higher terminating access rates.<sup>33</sup>

### III. DISCUSSION

13. There is ample evidence that rural call completion problems are widespread and serious.<sup>34</sup> We are dedicated to ensuring that all Americans receive high-quality telephone service. Although the Commission has stated unequivocally that traffic may not be blocked, choked, reduced, or restricted, we have learned that carriers often do not retain records that permit the Commission to determine compliance with these prohibitions. To that end, in this Notice we propose rules that would help the Commission monitor originating providers' call-completion performance and ensure that telephone service to rural consumers is as reliable as service to the rest of the country. In essence, these proposed rules would require facilities-based originating long-distance voice service providers to collect and report to the Commission data on call answer rates.<sup>35</sup> For purposes of this Notice, originating long-distance voice service providers include local exchange carriers, interexchange carriers, commercial mobile radio service (CMRS) providers, and interconnected VoIP service providers. We seek comment on whether these proposed rules should apply to other categories of providers as well, such as one-way VoIP service providers, and on the Commission's authority to extend these proposed rules to such providers. We also welcome data explaining why call answer rates might differ between rural and nonrural areas and why any differential may be reasonable.

14. We also propose a rule that would prohibit both originating providers and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted. We seek comment on whether these proposed rules will help alleviate rural call completion problems, or whether the Commission should consider different approaches, and, if so, what those approaches are.

15. We recognize that even when calls to rural areas in particular do get answered, the communications quality of the call may be so poor as to render the communication between the calling and called parties unsuccessful.<sup>36</sup> While we do not propose call communications quality standards at this time, we will continue to monitor the problem, and we may revisit the issue in the future if improvements in call answer rates and signaling integrity do not result in concomitant improvements in call communications quality.<sup>37</sup>

#### A. Data Reporting, Record Keeping, and Retention

16. Our processing of informal complaints that have been filed with the Commission concerning rural call completion problems indicates that some originating long-distance providers collect

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<sup>33</sup> See *Amendments to OAR 860-032-0007, To Address Call Termination Issues*, AR Docket No. 566, Public Utilities Commission of Oregon, Order No. 12-478 (2012), available at <http://apps.puc.state.or.us/orders/2012ords/12-478.pdf> (last accessed Jan. 29, 2013).

<sup>34</sup> In addition to the filings and testimony described above, the Commission has received hundreds of informal complaints from rural residents, businesses, and carriers. During the period September through November 2012, the Commission received informal complaints concerning more than 500 rural call completion problems.

<sup>35</sup> For ease of reference, in this Notice originating long-distance voice service providers are sometimes referred to simply as "originating providers."

<sup>36</sup> See, e.g., *May 2012 NECA, et al. Letter* at 1–2.

<sup>37</sup> We note that the significance of some commonly used network performance measures, such as Post Dial Delay measurement, is dependent on the integrity of the end-to-end signaling.

and retain the call history data that support detection of problems with calls to rural areas.<sup>38</sup> However, we have also found that some long-distance providers do not collect and retain information on failed call attempts that is necessary for segregating the percentage of calls failing to complete to rural areas from all calls being carried to all destinations. As a result, some long-distance providers appear unable to analyze rural call performance relative to overall performance or to distinguish the performance of intermediate providers in delivering calls to rural areas. Additionally, this lack of data has impeded Enforcement Bureau investigations.

17. Consequently, subject to certain limitations and safe harbors discussed below, we propose to adopt rules that would require facilities-based originating long-distance voice service providers to collect and retain basic information on call attempts and to periodically undertake a basic call completion summary analysis and report the results to the Commission. If the originating long-distance voice service provider is not facilities based, we propose to apply these obligations to the first facilities-based provider in the call-delivery chain, because the facilities-based provider will have access to the inaugural call detail information.<sup>39</sup>

18. Below, we seek comment on our proposed rules, the types of carriers and providers to be covered by these rules, the general categories of call attempts covered, the types of calls that should be excluded, the information to be collected on each call attempt covered, and the length of time such information should be retained. We also seek comment on possible safe harbors that would relieve providers of reporting obligations and reduce their record retention requirements.

19. Our authority for these reporting, record keeping, and retention rules lies in sections 201(b) and 202(a) of the Act: call routing practices that lead to rural call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201(b), or may violate carriers' duty under section 202(a) to refrain from unjust or unreasonable discrimination in practices, facilities, or services.<sup>40</sup> Sections 218, 220(a), and 403 of the Act provide additional authority for these proposed rules with regard to carriers.<sup>41</sup> To the extent that these proposed rules would apply to VoIP providers, we propose to exercise our ancillary authority to the extent that VoIP services are information services, on the ground that such requirements would be necessary for the Commission to carry out its section 201(b) and 202(a) obligations with regard to carriers.<sup>42</sup> We seek comment on this analysis and any additional sources of possible authority, such as section 403.<sup>43</sup>

## 1. Proposed Reporting, Record Keeping, and Retention Requirements

20. *Reporting Requirements.* We propose to adopt a rule requiring that facilities-based originating long-distance providers measure the call answer rate for each rural operating company number (OCN)<sup>44</sup> to which 100 or more calls were attempted during the calendar month for the categories of call

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<sup>38</sup> See *supra* para. 11.

<sup>39</sup> For purposes of this rulemaking, we consider an over-the-top interconnected VoIP service provider to be a facilities-based provider.

<sup>40</sup> 47 U.S.C. §§ 201(b), 202(a) (2006).

<sup>41</sup> 47 U.S.C. §§ 218, 220(a), 403 (2006).

<sup>42</sup> See *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968); *American Library Ass'n v. FCC*, 406 F.3d 689, 691-93 (D.C. Cir. 2005); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 18029, para. 974.

<sup>43</sup> 47 U.S.C. § 403 (2006).

<sup>44</sup> An operating company number is a four-place alphanumeric code that uniquely identifies providers of local telecommunications service. *ATIS Telecom Glossary 2012*, Alliance for Telecommunications Industry Solutions, <http://www.atis.org/glossary/definition.aspx?id=8448> (last accessed Jan. 29, 2013).

attempts identified below, and that originating long-distance providers also measure the overall call answer rate for nonrural call attempts.<sup>45</sup> We propose to adopt a rule requiring that originating long-distance providers submit in electronic form the monthly call answer rate for rural OCNs with 100 attempts or more and the nonrural monthly overall average to the Commission once per calendar quarter.<sup>46</sup> The data collection and reporting requirements that we propose would allow the Commission to compare an originating provider’s performance in delivering interstate and intrastate long-distance calls to rural local exchanges versus nonrural local exchanges. We believe that it is necessary to measure performance at the individual rural telephone company level, as identified by the OCN, to ensure that poor performance to any individual rural telephone company is not masked, as it otherwise would be by averaging together calls to all rural telephone companies or averaging call data for rural and nonrural areas. Figure 1 provides an example of a report in the form of an electronic spreadsheet that would be filed with the Commission quarterly.

Long Distance Provider A		Month 1			Month 2			Month 3		
		Calls Attempted	Calls Answered	% Calls Answered	Calls Attempted	Calls Answered	% Calls Answered	Calls Attempted	Calls Answered	% Calls Answered
<b>Nonrural [Total]</b>		X, XXX, XXX	Y, YYY, YYY	ZZ.Z%	X, XXX, XXX	Y, YYY, YYY	ZZ.Z%	X, XXX, XXX	Y, YYY, YYY	ZZ.Z%
<b>Rural [Total]</b>		XXX, XXX	YYY, YYY	ZZ.Z%	XXX, XXX	YYY, YYY	ZZ.Z%	XXX, XXX	YYY, YYY	ZZ.Z%
State	OCN									
AA	OCNA	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%
AA	OCNB	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%
AA	OCNC	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%
AA	OCND	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%
AA	OCNE	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%
BB	OCNF	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%
BB	OCNG	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%
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ZZ	OCNZ	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%	XX, XXX	YY, YYY	ZZ.Z%

Figure 1.

21. We seek comment on our proposed reporting requirements. Is the proposed 100 call per month threshold appropriate or, for example, should the threshold be tied to a provider’s overall number of call attempts, such as a percentage of overall call attempts? Should all call attempts be included, or just those attempted in some peak period such as between noon and 6:00 p.m. Eastern time? Are the proposed monthly measurement and quarterly reporting intervals appropriate? For example, is the nature of chronic call routing failures such that measurement data analyzed monthly masks problems that a weekly measurement would capture? If the Commission adopts quarterly reporting requirements, on what dates should they be filed? We seek comment on the benefits and burdens associated with our proposed reporting requirements. We seek comment on whether the information that will be provided should be treated as confidential or be open to public inspection.

<sup>45</sup> A “call attempt” (or “attempted call”) is a call that results in transmission by the reporting entity toward the terminating provider of the initial call setup message, regardless of the voice call signaling and transmission technology used.

<sup>46</sup> “Submit in electronic form” means the submission of the information using an electronic document rural call answer rate report template specified by the Commission. The template provides a list of the rural OCNs.



22. *Record Keeping and Retention.* We propose to adopt a rule requiring that providers record information for each long-distance call attempt they handle. We propose that, in addition to calling party number, called party number, and date and time, the information recorded on each call attempt include: (1) whether the call attempt was handed off to an intermediate provider and, if so, which intermediate provider; (2) whether the call attempt was going to a rural carrier and, if so, which rural carrier as identified by its OCN; (3) whether the call attempt was interstate; and (4) whether the call attempt was answered. We propose that providers be required to retain these call attempt records in a readily retrievable form for a period that includes the six most recent complete calendar months.<sup>47</sup>

23. We seek comment on our proposed record-keeping and record-retention requirements. We also seek comment generally on the long-distance records and data that originating providers currently collect in the normal course of business, and to what extent they already (1) capture and (2) retain the information proposed. For example, do originating providers typically retain the information we propose to be retained on each call attempt, including on failed attempts? We seek comment on the benefits and burdens associated with collecting and retaining information as described above that is additional to currently collected information. We seek comment on whether recording and retaining a statistically valid sample of data could fulfill the purposes of data retention and provide the basis for the required reporting while being less burdensome. Would a statistical sample support enforcement action in connection with a provider's call-completion practices?<sup>48</sup>

24. *Entities Covered By Proposed Rules.* As noted above, we propose to adopt a rule requiring that if the originating provider is not facilities based, the record-keeping, retention, and reporting requirements proposed in this Notice would apply to the first facilities-based provider that is involved in handling the call. In cases where the first facilities-based provider serves multiple non-facilities-based originating providers, the facilities-based provider should aggregate the call attempt information for all such non-facilities-based providers into a single report. We seek comment on this proposal. Does limiting these proposed requirements to facilities-based providers ensure that the rules apply to the entity with the most direct access to call records, thus minimizing the burden of compliance? Should the Commission also impose record-keeping and reporting requirements on intermediate providers? If so, what types of record-keeping and reporting requirements? Would the burden of compliance be lower for intermediate providers that also provide originating service to end users? We seek comment generally on the benefits and burdens associated with limiting our proposed requirements to facilities-based providers.

25. *Categories of Call Attempts.* For purposes of this rulemaking, we propose to categorize long-distance call attempts according to call source type and terminating provider type. With respect to call source type, the provider subject to these proposed rules will be either a facilities-based originating long-distance voice service provider or, if the originating provider is not facilities based, the first facilities-based long distance service provider in the call-completion chain. We propose that data collection requirements cover, at a minimum, the following source-termination categories of long-distance call traffic: originating provider to rural telephone company (including rural CLEC<sup>49</sup>), originating provider to nonrural LEC (including nonrural CLEC), first facilities-based provider to rural telephone company (including rural CLEC), and first facilities-based provider to nonrural LEC (including nonrural CLEC). We seek comment on whether other categories of calls should also be covered, such as calls to CMRS subscribers, which do not normally incur high termination access charges on termination

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<sup>47</sup> "Readily retrievable form" means the information on individual attempted calls shall be retained in such a manner that it can be separated out from other records and retrieved in electronic form within a period not to exceed two weeks.

<sup>48</sup> See *supra* para. 16.

<sup>49</sup> See 47 C.F.R. § 61.26(a)(6) (defining "rural CLEC").

in rural areas and have not been the subject of the same types of complaints as calls to rural telephone companies.

26. We seek comment on whether these proposed categories are both necessary and sufficient for purposes of the data retention and reporting described above. For example, should some subcategories, such as traffic to nonrural CLECs, be excluded? We note that some providers may handle substantial amounts of auto-dialer traffic on behalf of retail business customers who may have call completion expectations and capacity requirements that are different from those of residential and business callers.<sup>50</sup> Can such auto-dialer traffic sources be reliably identified, and if so, should auto-dialer call attempts be excluded from traffic sources? Our principal objective is to compare a provider's rural and nonrural performance. Is it thus reasonable to require providers that can identify and exclude auto-dialer traffic to do so, even if other providers may not be able to do so? We are aware that auto-dialers are also used to distribute emergency alert notifications, including across some rural areas.<sup>51</sup> Can emergency auto-dialer sources be reliably identified, and if so, can and should emergency auto-dialer traffic be included even if other auto-dialer traffic is excluded?

27. Call Attempts That Can Be Excluded. We propose to use a "call answer rate" as the basic measure of call completion performance. An "answered call attempt" means a call attempt that is answered by the called party, including, for example, by voicemail, answering machine, or fax machine. We calculate a call answer rate as "the number of call attempts that result in an answer divided by the total number of calls attempted, expressed as a percentage."<sup>52</sup> In the following paragraphs, we propose the types of call attempts to be included and excluded when calculating the call answer rate.

28. In the typical arrangement, an intermediate provider must hand a call back to the upstream provider if it cannot expeditiously hand off the call attempt downstream, *e.g.*, to the terminating provider.<sup>53</sup> This is so the upstream provider can attempt to complete the call using another intermediate provider or over its own facilities. In order to avoid double-counting such multiple attempts for the same call, we propose that call attempts that are handed back to the upstream provider should be excluded from data collection and reporting requirements. We seek comment on whether it is feasible and appropriate to exclude such call attempts in view of the reporting objective.

29. When a terminating provider is successful or unsuccessful in completing a call, it signals a "cause value" giving a precise indication of the event. Cause values can be classified into three general categories indicating the nature or origin of the event: Call Completed, User, and Network.<sup>54</sup> One

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<sup>50</sup> For example, an auto-dialer may be programmed to hang up before a call attempt can be answered by voicemail or an answering machine.

<sup>51</sup> See Statement of Denny Law, Golden West Telecommunications, Rural Call Completion Workshop video at 15:22, available at <http://www.fcc.gov/events/rural-call-completion-workshop> (stating that "several blizzards in South Dakota forced schools to cancel classes or close early," and that "[w]hen the schools activated the [out-of-state] automated phone platform, hundreds of calls failed to reach parents") (last accessed Jan. 29, 2013).

<sup>52</sup> Our "call answer rate" provides essentially the same information as the "Answer Seizure Ratio (ASR)" used in legacy TDM-trunk-based telephone systems. See International Telecommunication Union, *ITU-T Recommendation E.425 Internal automatic observations* at 1.3 (2002), available at <http://www.itu.int/rec/T-REC-E.425-200203-I/en> (last accessed Jan. 29, 2013) (*ITU-T Recommendation E.425*).

<sup>53</sup> See Alliance for Telecommunications Industry Solutions, *Inter-carrier Call Completion/Call Termination Handbook* at 5.3 (2012) (recommending that an Intermediate Provider should release the call back to the IXC) available at <http://www.atis.org/docstore/product.aspx?id=26780> (last accessed Jan. 29, 2013) (*ATIS Handbook*).

<sup>54</sup> For example, when a call attempt is answered by the called party, the terminating provider typically sends one of the "Call Completed" category cause values, such as "normal call clearing" (cause value 16) or "normal, unspecified" (cause value 31) when one of the parties terminates the conversation by hanging up. If the call attempt is not answered, a "User" category cause value such as "user busy" (cause value 17) or "no user responding" (cause

(continued....)

commonly occurring “User” cause is “unallocated number” (cause value 0), which indicates that the caller has dialed a properly formatted telephone number, but that number itself is not assigned. Excluding all call attempts indicating that the user apparently misdialled could mask call attempts that actually failed or were dropped within an intermediate provider’s network, because there is anecdotal evidence to suggest that calling parties sometimes receive intercept messages that wrongly indicate, for example, that the call cannot be completed as dialed.<sup>55</sup> We thus propose that all call attempts to an “unallocated number” be retained. We seek comment on this proposal. Similarly, we have anecdotal evidence that other “User” events, such as “user busy,” “no user responding” (*i.e.*, ring no answer) or “number changed,” which should be signaled only by the terminating provider, are sometimes being signaled by intermediate providers.<sup>56</sup> Consequently, the most reliable measure is whether the call attempt is actually answered (“call completed” cause values 16 and 31); excluding call attempts indicating apparent user behavior such as “user busy” or “user not responding” could mask call attempts that actually failed or were dropped within an intermediate provider’s network. Thus we propose that any call attempt not answered and showing a “User” category release cause code should be included in the total of call attempts. We seek comment on this proposal.

30. We seek comment on other types of long-distance call attempts that should be excluded from the categories of call attempts covered. For example, can calls to toll-free numbers be reliably excluded? Should answered calls of very short duration, such as less than two seconds, be excluded? Are there internal network test calls that are readily identifiable and easily excluded?

## 2. Proposed Limitations on Application of Reporting and Retention Rules

31. In order to lessen the burden of compliance with these proposed rules, we propose to require only those originating long-distance providers and other covered providers with more than 100,000 retail long-distance subscribers (business or residential) to retain the basic information on call attempts and to periodically report the summary analysis of that information to the Commission. We seek comment on this proposal. Would the exclusion of smaller providers compromise the Commission’s ability to monitor rural call completion problems effectively?

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(Continued from previous page)

value 18) is returned; if the caller misdials a number using a valid format for a number that is not in use, a “User” category “unallocated number” (cause value 0) is returned. *See ITU-T Recommendation E.425* at Annex A. We recognize that some originating providers may use the larger set of ANSI cause codes, but we concern ourselves here only with “Users” cause values, which are the same in both sets of cause codes. Mappings between these cause values used by Signaling System 7 for TDM-based telephony and equivalent status code values used by the Session Initiation Protocol for IP-based telephony are recommended in *RFC 3398 Integrated Services Digital Network (ISDN) User Part (ISUP) to Session Initiation Protocol (SIP) Mapping*, Camarillo *et al*, Internet Engineering Task Force, December 2002, at 7.4.2.1; International Telecommunication Union, *ITU-T Recommendation Q.1912.5 Interworking between Session Initiation Protocol (SIP) and Bearer Independent Call Control protocol or ISDN User Part*, International Telecommunication Union, March 2004, available at <http://www.itu.int/rec/T-REC-Q.1912.5-200403-I/en> (last accessed Jan. 29, 2013); *RFC 6432 Carrying Q.850 Codes in Reason Header Fields in SIP (Session Initiation Protocol) Responses*, Jesske and Liess, Internet Engineering Task Force, November 2011.

<sup>55</sup> The intercept message recording is typically played by the originating provider when it receives back an “unallocated number” cause code. *See 2012 Declaratory Ruling*, 27 FCC Red at 1353, para. 6.

<sup>56</sup> *See, e.g.*, Fritz Hendricks, Onvoy Voice Service, “When a person calls a customer in a rural market the [caller’s] phone will ring 8 to 10 times before the end office of the ILEC is ever signaled – if it is signaled at all.” (Rural Call Completion Workshop video at 13:40) and “[The caller] will hear ring but the far end will never ring; that is the trouble in approximately 60 to 65 per cent of the time.” (at 41:20). In such scenarios the incoming long distance caller believes he has heard prolonged ringing and finally hangs up, so the event is signaled as “user not responding” even though the user’s phone may never have rung.

32. We also propose two safe harbors by which providers can avoid or reduce their obligations under the data reporting and retention obligations that we propose in this Notice. The purpose of these safe harbors is to minimize the burden of compliance without compromising the goals of these rules. We seek comment on the proposed safe harbors, and whether they should include safeguards to ensure that providers' call-completion performance does not suffer. For example, should we delegate to the Wireline Competition Bureau authority to revoke a provider's eligibility for these safe harbors if the Commission receives a certain number of complaints about that provider's call-completion performance? If so, what would be an appropriate number of complaints or other trigger to justify revoking eligibility for the safe harbors?

33. *Managing Intermediate Provider Safe Harbor.* Our first proposed safe harbor would relieve a provider of all call completion data retention and reporting obligations proposed in this Notice. To qualify for this safe harbor, a provider must certify on an annual basis that it restricts by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path before the call reaches the terminating provider.<sup>57</sup> The provider must further certify that any nondisclosure agreement with an intermediate provider permits the originating provider to reveal the identity of the intermediate provider to the Commission and to the rural carrier(s) whose incoming long-distance calls are affected by the intermediate provider's performance. Finally, the provider must certify that it has a process in place to monitor the performance of its intermediate providers in completing calls to individual rural telephone companies as identified by Operating Carrier Number.

34. We seek comment on this proposed safe harbor. For example, will restricting the number of intermediate providers in the call path from a retail customer improve the originating provider's control sufficiently to maintain rural call answer rates that are on par with nonrural rates? Is the restriction to no more than two intermediate providers between the originating provider and the terminating provider the appropriate number? Will providing the identity of the intermediate provider that is affecting the incoming long-distance calls assist the terminating rural provider in troubleshooting with other originating providers?

35. *Monitoring Performance Safe Harbor.* Our second proposed safe harbor would subject a provider to a reduced call-completion data retention obligation and relieve the provider of all reporting obligations proposed in this Notice. To qualify for this safe harbor, a provider must certify on an annual basis that for each of the previous 12 months, it has met the following performance standard: the average call answer rate for all rural carriers to which the provider attempted more than 100 calls in a month was no more than 2 percent less than the average call answer rate for all calls it placed to nonrural carriers in the same month, and the call answer rates for 95 percent of those rural carriers to which the provider attempted more than 100 calls were no more than 3 percent below the average rural call answer rate. Finally, the provider must certify that it has a process in place to investigate its performance in completing calls to individual rural telephone companies (as identified by Operating Carrier Number) for which the call answer rate is more than 3 percent below the average of the rural call answer rate for all rural telephone companies to which it attempted more than 100 calls. Providers that certify compliance with this safe harbor would be relieved of any quarterly reporting obligation and would be required to retain call attempt data in readily retrievable form for a reduced period of three months.

36. We seek comment on this proposed safe harbor. Are these proposed thresholds reasonable and appropriate? Are calls to business customers more likely to be answered than calls to residential customers, and is the percentage of calls to business customers in nonrural area higher than in rural areas

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<sup>57</sup> See *ATIS Handbook* at 5.1 ("As the number of providers handling a call increases, there is the potential for lengthier call setup delay and other impairments. Troubleshooting may also prove more difficult. Some carriers have found it useful to limit underlying carriers to including no more than one additional provider, not including the terminating carrier, in the call.").



such that a call answer rate differential is appropriate, and if so, are the differentials proposed above reasonable? Is the nature of chronic call routing failures such that measurement data analyzed monthly masks significant problems? Would it be more appropriate to set a threshold based on weekly or other measurements? Is three months of past information sufficient if any investigation of rural call completion or service quality issues is deemed necessary, notwithstanding that a particular type of safe harbor certification has been made?

### 3. Duration of Proposed Reporting and Retention Rules

37. In the *USF/ICC Transformation Order*, the Commission adopted rules that may ultimately address the root causes of many rural call completion problems.<sup>58</sup> In particular, in comprehensively reforming intercarrier compensation, the Commission adopted a bill-and-keep methodology for all intercarrier traffic, and adopted a transition plan to gradually reduce most termination charges, which, at the end of the transition, should eliminate the primary incentives for cost-saving practices that appear to be undermining the reliability of rural telephone service.<sup>59</sup>

38. NARUC has argued, and we agree, that there is a need to limit the harmful effect of these rural call completion problems on consumers in the near term.<sup>60</sup> Accordingly, we propose these rules to provide prompt relief to rural consumers who are receiving inferior telephone service. We seek comment, however, on whether the rules we propose today should expire at the end of the intercarrier compensation reform transition period or some other point. Would a sunset provision reduce the burden of compliance? Would rural consumers be sufficiently protected from call completion problems if the rules expire at that time? If not, we seek comment on alternative sunset dates, or whether the requirements should remain in effect until the Commission modifies the relevant rules.

#### B. Proposed Ring Signaling Integrity Requirements

39. A major complaint by rural representatives regarding call termination problems is “false audible ringing,” in which the long-distance caller hears prolonged ringing—and so finally hangs up—before the rural phone he called has rung at all.<sup>61</sup> This appears to be relatively new as a widespread phenomenon, and is brought about when the originating provider or an intermediate provider prematurely triggers the audible ring tone to the caller before the call setup request has actually reached the terminating rural provider. An originating provider or intermediate provider may do this to mask the silence that would otherwise be heard by the caller during excessive call setup time.<sup>62</sup> Moreover, once an

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<sup>58</sup> See, e.g., *USF/ICC Transformation Order*, 26 FCC Rcd at 17904–15, paras. 736–759. The Commission also adopted rules to address “phantom traffic,” *i.e.*, calls for which identifying information is missing or masked in ways that frustrate intercarrier billing. The lack of such basic information to accompany calls has also resulted in calls being delivered without Caller ID, which is a common call quality complaint in rural areas. The Commission now requires telecommunications carriers and providers of interconnected VoIP service to include the calling party’s telephone number in all call signaling, and requires intermediate carriers to pass this signaling information, unaltered, to the next provider in a call path. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17897–98, paras. 719–720; see also 47 C.F.R. § 64.1601(a).

<sup>59</sup> The transition to a bill-and-keep methodology for most terminating charges is nine years for rate-of-return carriers. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17394, para. 801 & Figure 9; 47 C.F.R. §§ 51.907, 51.909.

<sup>60</sup> *September 2011 NARUC Letter* at 2.

<sup>61</sup> See *supra* para. 2 & note 56; Letter from Sharon Gillett, Chief, Wireline Competition Bureau, FCC, to Thomas Goode, General Counsel, ATIS, 26 FCC Rcd 16454 (2011).

<sup>62</sup> Extensive call setup can occur, for example, because the originating provider or an intermediate provider is sequentially searching through the routing alternatives offered by intermediate providers. See *supra* note 57.



intermediate provider provides a ringing indication to an originating provider while still processing the call, the call cannot be handed back to the preceding provider for an alternate route.<sup>63</sup>

40. This premature audible ringing departs from the long-established telephony signaling practice (and end-user expectation) of audible ringing indication being provided to the caller only after the terminating provider affirmatively signals that the called line is free and the called party is being alerted.<sup>64</sup> The net effect of this practice is to unfairly make it appear to the caller that the terminating rural provider is responsible for the call failure, instead of the originating provider. Complaints filed with the Commission indicate that this misperception is often shared by the rural called party, who may eventually hear his phone ringing and answer after the calling party has finally hung up.

41. The decision by some providers to deviate from traditional industry practice is likely to harm consumers in rural areas. We therefore propose a new rule that would prohibit both originating providers and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted. Originating providers and intermediate providers must also convey audio tones and announcements sent by the terminating provider to the calling party. This proposal would codify a widely accepted industry practice that has in the past proven effective.<sup>65</sup> We expect that the proposed rule will improve the ability to identify the provider responsible for service failures, without imposing unduly burdensome costs.<sup>66</sup>

42. Our authority for this ring signaling integrity rule lies in section 201(b) of the Act: it is an unreasonable practice to send misleading ring sounds to customers making long-distance phone calls, as it may cause them to believe that the called party is not answering when in fact the call has not yet been connected or has been connected for a shorter time than the ring sounds would lead the calling party to believe.<sup>67</sup> To the extent that this proposed rule would apply to VoIP providers, we propose to exercise our ancillary authority to the extent that VoIP services are information services, on the ground that such

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<sup>63</sup> See, e.g., Letter from Steven Thomas, Counsel for Transcom Enhanced Services, Inc., to William Dever, Chief, Competition Policy Division, Wireline Competition Bureau, FCC at 4 (filed Oct. 17, 2011) (“In an effort to try to keep calling parties on the line while the extended attempt to secure a through connection proceeds, a provider might choose to insert a self-generated RBT [Ring Back Tone] before actual receipt of the required signaling messages (ISDN Alerting message or SS7 ACM) from the terminating office. If the call ends up not successfully completing (and actual RBT does not come) the provider would then be forced to stop RBT and abandon the call attempt.”).

<sup>64</sup> See *ATIS Handbook* at 4.1.5.1 (“Callers expect to hear, during call processing, that their call is progressing, and that when it has been set up, end to end, they will hear tone (ring back), indicating that the call set up has progressed to the point that it is ringing at the called end . . . . When ring back is presented to the caller, in the absence of receipt of the proper SS7 or SIP message [from the terminating switch], the caller may infer that the phone they are calling is ringing when in fact it is not.”).

<sup>65</sup> See, e.g., Alliance for Telecommunications Industry Solutions, *ATIS Telecom Glossary*, available at <http://www.atis.org/glossary/definition.aspx?id=2065> (defining the ringback signal as a signal provided to a caller to indicate that the called-party instrument is receiving a ringing signal); Internet Engineering Task Force, *RFC 3960 Early Media and Ringing Tone Generation in the Session Initiation Protocol Initiation (SIP)*, at 3.2 (Dec. 2004) (“In the PSTN, telephone switches typically play ringing tones for the caller, indicating that the callee is being alerted. When, where, and how these ringing tones are generated has been standardized (i.e., the local exchange of the callee generates a standardized ringing tone while the callee is being alerted.”), available at <https://tools.ietf.org/html/rfc3960#section-3.2>.

<sup>66</sup> Our proposal is similar, in many respects, to the proposal on Calling Party Number signaling that the Commission adopted in the *USF/ICC Transformation Order* with support from many stakeholders. *USF/ICC Transformation Order*, 26 FCC Rcd at 17893-97, paras. 710-718; 47 C.F.R. § 64.1601(a).

<sup>67</sup> 47 U.S.C. § 201(b) (2006).

requirements would be necessary for the Commission to carry out its section 201(b) obligations with regard to carriers.<sup>68</sup> We seek comment on this analysis and any additional sources of possible authority.

43. We invite comment on this proposed rule and on whether it is consistent with prior telephony industry practice and telephone user expectation with respect to the meaning of audible ringing. We seek comment on whether the proposed rule is consistent with recommended industry practice for TDM- and IP-based telephony interworking. We seek comment on the benefits and burdens associated with this proposed rule. We also seek comment on the need to extend these requirements to non-interconnected VoIP providers and on the Commission's authority to do so. Finally, we seek comment on whether, for technical reasons, any aspect of this proposed rule should be applied differently to originating CMRS carriers.

#### IV. PROCEDURAL MATTERS

##### A. Paperwork Reduction Act

44. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. No. 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

##### B. Regulatory Flexibility

45. As required by the Regulatory Flexibility Act of 1980, as amended, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for this notice of proposed rulemaking, of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this notice of proposed rulemaking. The IRFA is in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the notice of proposed rulemaking. The Commission will send a copy of the notice of proposed rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the SBA. In addition, the notice of proposed rulemaking and IRFA (or summaries thereof) will be published in the Federal Register.

##### C. *Ex Parte* Presentations

46. The proceeding this Notice initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>69</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments

<sup>68</sup> *See United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968); *American Library Ass'n v. FCC*, 406 F.3d 689, 691-93 (D.C. Cir. 2005); *see also USF/ICC Transformation Order*, 26 FCC Rcd at 17896, para. 718 & n.1232.

<sup>69</sup> 47 C.F.R. §§ 1.1200 *et seq.*

already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### **D. Comment Filing Procedures**

47. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### **E. Contact Persons**

48. For further information about this rulemaking proceeding, please contact Steven Rowings, Competition Policy Division, Wireline Competition Bureau at (202) 418-1033.

**V. ORDERING CLAUSES**

49. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 1, 2, 4(i), 201, 202, 218, 220(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201, 202, 218, 220(a), 403, this Notice of Proposed Rulemaking IS ADOPTED.

50. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Proposed Rules

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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**Subpart V—Data Retention and Reporting of Call Answer Rates Affecting Long Distance Telephone Calls to Rural Areas****§ 64.2101 Definitions**

(a) *Answered call*. The term “answered call” means a call that is answered by the called party, including by voicemail service, facsimile machine or answering machine.

(b) *Attempted call*. The term “attempted call” means a call that results in transmission by the reporting entity toward the terminating provider of the initial call setup message, regardless of the voice call signaling and transmission technology used.

(c) *Call answer rate*. The term “call answer rate” means the number of attempted calls that result in an answered call divided by the total number of attempted calls, expressed as a percentage.

(d) *Facilities-based provider*. The term “facilities-based provider” excludes providers that do not originate long distance calls using their own equipment and includes interconnected VoIP providers, for purposes of this part.

(e) *Intermediate provider*. The term “intermediate provider” has the same meaning as in section 64.1600(f) of this chapter.

(f) *Long distance voice service*. The term “long distance voice service” includes interstate inter-LATA, intrastate inter-LATA, interstate interexchange, intrastate interexchange, inter-MTA interstate and inter-MTA intrastate voice services.

(g) *Operating company number (OCN)*. The term “operating company number” means a four-place alphanumeric code that uniquely identifies a provider of local telecommunications service.

(h) *Originating long distance voice service provider (originating provider)*. The term “originating long distance voice service provider” or “originating provider” includes a local exchange carrier as defined in section 64.4001(d), an interexchange carrier as defined in section 64.4001(e), a commercial mobile radio service provider as defined in section 20.3, and an interconnected voice over Internet Protocol (VoIP) provider as defined in 47 U.S.C. § 153(25).

(i) *Rural CLEC*. The term “rural CLEC” has the same meaning as in section 61.26(a)(6) of this chapter.

(j) *Rural OCN*. The term “rural OCN” means an operating carrier number that uniquely identifies a rural telephone company. The term “nonrural OCN” means an operating carrier number that does not identify a rural telephone company.

(k) *Rural telephone company*. The term “rural telephone company” has the same meaning as in section 51.5 of this chapter.



### § 64.2103 Retention of Attempted Call Records

Except as described in rule 64.2107, an originating long distance voice service provider (or first facilities-based provider when the originating provider is not facilities-based) shall retain records of attempted calls in a readily retrievable form for a period that includes the six (6) most recent complete calendar months.

(1) Information shall be retained for each attempted call to a rural telephone company (including rural CLEC) and nonrural LEC (including nonrural CLEC). An attempted call that is returned by an intermediate provider to the originating provider and re-assigned shall count as a single attempted call.

(2) The information contained in each “record” of an attempted call shall include:

(i) calling party number;

(ii) called party number;

(iii) date;

(iv) time;

(v) an indication whether the call was handed off to an intermediate provider or not and, if so, which intermediate provider;

(vi) an indication whether the called party number was assigned to a rural telephone company or not and, if so, the OCN of the rural telephone company;

(vii) an indication whether the call was interstate or intrastate;

(viii) an indication whether the call was answered or not.

### § 64.2105 Report of Call Answer Rates

Except as described in rule 64.2107, each originating long distance voice service provider (or its first facilities-based provider when the originating provider is not facilities-based) shall submit a report to the Commission in electronic form not later than the 15th day of the first month following the end of each calendar quarter. The information contained in the report shall include for each month in that quarter:

(1) For each rural OCN to which more than 100 calls were attempted during the month, the OCN, the state, the number of attempted calls, the number of attempted calls that were answered, and the call answer rate;

(2) For rural OCNs to which more than 100 calls were attempted during the month (all such OCNs in the aggregate), the total number of attempted calls, the total number of attempted calls that were answered, and the call answer rate;

(3) For nonrural OCNs (in the aggregate), the total number of attempted calls, the total number of attempted calls that were answered, and the call answer rate.

### § 64.2107 Exceptions from Retention and Reporting Requirements

(a) An originating long distance voice service provider with 100,000 or fewer total retail long distance subscribers (business and residential combined) is not required to retain records of attempted calls or to report call answer rates as provided in this subpart. A first facilities-based provider for originating long distance service providers that do not report, and that provides service directly or indirectly to 100,000 or fewer retail long distance subscribers, is not required to retain records and to report as provided in this subpart.

(b) An originating provider or a first facilities-based provider that makes one of the following annual certifications is not required to report rural call completion rates to the Commission for one year following such certification. Providers filing Certification (1) below are not required to retain records of attempted calls, and providers filing Certification (2) below are required to retain records of attempted calls for only the three (3) most recent complete calendar months.

(1) *Certification of Intermediate Provider Management.* The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an originating long distance voice service provider or first facilities-based provider with first-hand knowledge of the accuracy and completeness of the information provided, certifies as follows:

I \_\_\_\_\_ (name) \_\_\_\_\_ (title), an officer of \_\_\_\_\_ (entity), certify that \_\_\_\_\_ (entity) restricts by contract any intermediate provider to which a call is directed by (entity) from permitting more than one additional intermediate provider in the call path before the call reaches the terminating provider. I certify that any nondisclosure agreement with an intermediate provider permits \_\_\_\_\_ (entity) to reveal the identity of the intermediate provider to the Commission and to the rural telephone company(ies) whose incoming long-distance calls are affected by the intermediate provider's performance. I certify that \_\_\_\_\_ (entity) has a process in place to monitor the performance of its intermediate providers in completing calls to individual rural telephone companies as identified by Operating Carrier Number.

(2) *Certification of Rural Call Performance.* The chief executive officer (CEO), chief financial officer (CFO), or other senior executive of an originating long distance voice service provider or first facilities-based provider with first-hand knowledge of the accuracy and completeness of the information provided, certifies as follows:

I \_\_\_\_\_ (name) \_\_\_\_\_ (title), an officer of \_\_\_\_\_ (entity), certify that for each of the previous 12 full calendar months, \_\_\_\_\_ (entity) has met the following performance standard: the average of the call answer rates for all rural telephone companies as identified by Operating Carrier Number to which \_\_\_\_\_ (entity) attempted more than 100 calls in a month was no more than 2 percent less than the average call answer rate for all calls \_\_\_\_\_ (entity) placed to nonrural LECs in the same month, and the call answer rates for 95 percent of those rural telephone companies to which \_\_\_\_\_ (entity) attempted more than 100 calls were no more than 3 percent below the average rural call answer rate. I certify that \_\_\_\_\_ (entity) has a process in place to investigate its performance in completing calls to individual rural telephone companies as identified by Operating Carrier Number for which the call answer rate is more than 3 percent below the average of the rural call answer rate for all rural telephone companies to which \_\_\_\_\_ (entity) attempted more than 100 calls.

## **Subpart W—Ring Signaling Integrity**

### **§ 64.2201 Ringing Indication Requirements**

(a) Telecommunications carriers and providers of interconnected Voice over Internet Protocol (VoIP) services, when originating interstate or intrastate traffic on the public switched telephone network (PSTN) or originating interstate or intrastate traffic that is destined for the PSTN, shall not generate a ringing indication locally that is conveyed to the calling party until the terminating provider has signaled that the called party is being alerted to an incoming call, such as by ringing. If the terminating provider signals that the called party is being alerted and provides an audio tone or announcement, originating providers are required to cease any locally-generated audible tone or announcement and convey the terminating provider's tone or announcement to the calling party. The scope of this provision includes any voice call signaling and transmission technologies.

(b) Intermediate providers within an interstate or intrastate call path that originates and/or terminates on the PSTN must return unaltered to providers in the call path any signaling information that indicates that

the terminating provider is alerting the called party, such as by ringing. An intermediate provider may not generate signaling information that indicates the terminating provider is alerting the called party unless it has received such an indication from the terminating provider. Intermediate providers must also return unaltered any audio tone or announcement provided by the terminating provider. The scope of this provision includes any voice call signaling and transmission technologies.

## APPENDIX B

### Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

#### A. Need for, and Objectives of, the Proposed Rules

2. The NPRM seeks comment on a variety of issues relating to possible remedies for the problem of low call completion rates and poor overall call quality to rural America. As discussed in the NPRM, the proposed rules will provide an incentive for originating long distance providers to more closely monitor their call completion performance in rural areas and more actively manage their dealings with intermediate providers, while also providing more clarity to consumers in identifying the carriers responsible for call completion and quality problems. The ubiquity and reliability of the nation's telecommunications network are of paramount importance to the Communications Act of 1934, as amended,<sup>4</sup> and problems adversely affecting that ubiquity and reliability threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network. In order to confront these challenges, the NPRM asks for comment in a number of specific areas.

#### 1. Data Reporting and Retention Requirements

3. The NPRM first proposes that facilities-based originating long-distance voice service providers collect and retain basic information on call attempts and report to the Commission data on call answer rates. The NPRM proposes that originating long-distance voice service providers include local exchange carriers, interexchange carriers, commercial mobile radio service (CMRS) providers, and interconnected VoIP service providers, and seeks comment on whether these proposed requirements should apply to other categories of providers, such as one-way VoIP service providers, and on the Commission's authority to extend the proposed rules to such providers.<sup>5</sup> The NPRM proposes to apply these obligations to the first facilities-based provider in the call-delivery chain when the originating long-distance voice service provider is not facilities based.<sup>6</sup> The NPRM also seeks comment offering data to explain any differential in call answer rates between rural and nonrural areas, and why such a differential may be reasonable.<sup>7</sup>

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> *Id.*

<sup>4</sup> 47 U.S.C. § 151 *et seq.*

<sup>5</sup> See NPRM Section III.

<sup>6</sup> *Id.* In cases where the first facilities-based provider serves multiple non-facilities-based originating providers, the facilities-based provider should aggregate the call attempt information for all such non-facilities-based providers into a single report.

<sup>7</sup> *Id.*

4. Specifically, the NPRM proposes to adopt a rule requiring that facilities-based originating long-distance providers measure the call answer rate for each rural operating company number (OCN) to which 100 or more calls are attempted in a calendar month, as well as the overall call answer rate for nonrural call attempts, and to retain those records for a period including the six most recent complete calendar months.<sup>8</sup> The NPRM seeks comment on these proposed requirements, including whether and to what extent originating providers collect and retain these sorts of call attempt records in the ordinary course of business, as well as on the benefits and burdens these data collection and retention requirements might produce.

5. The NPRM further proposes to adopt a rule requiring that originating long-distance providers report to the Commission the monthly call answer rate for rural OCNs with 100 attempts or more and the nonrural monthly overall average call answer rate once per calendar quarter in order that the Commission can compare an originating provider's performance in delivering interstate and intrastate long-distance calls to rural local exchanges versus nonrural local exchanges.<sup>9</sup> The NPRM seeks comment on this reporting requirement, including whether the 100-call per month threshold is appropriate and whether a weekly reporting requirement would provide more useful data than the proposed monthly requirement, the benefits and burdens the proposed reporting requirements might produce, and whether the information reported should be treated as confidential or open to public inspection.<sup>10</sup>

6. The NPRM also seeks comment on application of the proposed rules, if the originating provider is not facilities based, to the first facilities-based provider in the call chain. The NPRM seeks comment on whether limiting the proposed requirements to facilities-based providers ensures that the entities collecting and reporting this data are those with the most direct access to call records, thus minimizing the burden of compliance. The NPRM also seeks comment on whether the proposed rules, or some variation thereof, should also be applied to intermediate providers and whether the burden of compliance would be lower for intermediate providers that also provide originating service to end users. The NPRM seeks comment on the burdens and benefits associated with limiting the application of the proposed rules to facilities-based providers.<sup>11</sup>

7. The NPRM proposes to adopt a rule requiring that providers record information for each long-distance call attempt they handle. In addition to calling party number, called party number, date and time, the NPRM proposes that the information recorded on each call attempt include: (1) whether the call attempt was handed off to an intermediate provider and, if so, which intermediate provider; (2) whether the call attempt was going to a rural carrier and, if so, which rural carrier as identified by its OCN; (3) whether the call attempt was interstate; and (4) whether the call attempt was answered.<sup>12</sup> The NPRM proposes that providers be required to retain these call attempt records in a readily retrievable form for a period that includes the six most recent complete calendar months.<sup>13</sup> The NPRM seeks comment on these proposed record-keeping and record retention requirements, on what long-distance records and data that originating providers currently collect in the normal course of business, and on the benefits and burdens associated with collecting and retaining the information proposed.

8. The NPRM proposes to categorize long-distance call attempts according to call source type and terminating provider type. These proposed source-termination categories of long-distance call traffic include, at a minimum: originating provider to rural telephone company (including rural CLEC), originating provider to nonrural LEC (including nonrural CLEC), first facilities-based provider to rural

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<sup>8</sup> See NPRM Section III.A.1.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See NPRM Section III.A.1.

<sup>13</sup> *Id.*



telephone company (including rural CLEC), and first facilities-based provider to nonrural LEC (including nonrural CLEC). The NPRM seeks comment on whether these categories of call attempts are sufficient for the proposed rules, and also asks whether other categories of calls should be included, such as calls to CMRS subscribers.<sup>14</sup>

9. The NRPM proposes to exclude from the proposed data collection and reporting requirements call attempts that are handed back to an upstream provider for further attempts at completion in order to avoid double-counting such multiple attempts for the same call. The NPRM seeks comment on this proposal. The NPRM also proposed to include in the data collection and reporting requirements all call attempts not answered that show a “User” category release cause code<sup>15</sup> in response to concerns that excluding such call attempts could mask call attempts that actually failed or were dropped within an intermediate provider’s network.<sup>16</sup> The NPRM seeks comment on the appropriateness and efficacy of these proposals, and on whether other types of long-distance call attempts should be excluded.

## 2. Proposed Limitations on Application of Reporting and Retention Rules

10. The NPRM proposes to apply these reporting and retention requirements only to covered providers with more than 100,000 retail long-distance subscribers (business or residential) in order to reduce the burden of compliance with the proposed rules.<sup>17</sup> It seeks comment on this proposal, and on whether the exclusion of smaller providers would compromise the Commission’s ability to effectively monitor rural call completion problems.

11. The NPRM also proposes two safe harbors by which covered providers can avoid or reduce their reporting and retention obligations under the proposed rules in order to minimize the burden of compliance without compromising the goals of the proposed rules. The NPRM seeks comment on the proposed safe harbors, whether the proposed safe harbors will achieve that purpose, and whether the safe harbors should include safeguards to ensure that providers’ call-completion performance does not suffer. The NPRM seeks comment on whether the Commission should delegate authority to the Wireline Competition Bureau to revoke a provider’s eligibility for these safe harbors if the Commission receives a certain number of complaints about that provider’s call-completion performance.

12. The NPRM proposes in the first safe harbor to relieve a covered provider of the proposed reporting and data retention requirements if it certifies annually that it restricts by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path before the call reaches the terminating provider. This proposed safe harbor also requires a provider to certify that any nondisclosure agreement with an intermediate provider permits the originating provider to reveal the intermediate provider’s identity to the Commission and to any rural carrier whose incoming long-distance traffic is affected by the intermediate provider’s performance. Finally, the first proposed safe harbor requires the covered provider to certify that it has a process in place to monitor the performance of its intermediate providers in completing calls to individual rural telephone companies as identified by Operating Carrier Number.<sup>18</sup>

13. The NRPM seeks comment on this proposed safe harbor, including whether restricting the number of intermediate providers in the call path from a retail customer will improve the originating provider’s control sufficiently to maintain rural call answer rates that are on par with nonrural rates, whether the restriction to no more than two intermediate providers between the originating provider and

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *See* NPRM Section III.A.2.

<sup>18</sup> *Id.*

the terminating provider is the appropriate number, and whether disclosing the identity of the intermediate provider will allow originating and terminating providers to troubleshoot more effectively.

14. The NPRM proposes in the second safe harbor to reduce to three months a covered provider's record retention obligations and eliminate its reporting obligations if it certifies annually that for each of the preceding 12 months: (1) its average call answer rate for all rural carriers to which the provider attempted more than 100 calls in a month was no more than 2 percent less than the average call answer rate for all calls it placed to nonrural carriers in the same month; and (2) the call answer rates for 95 percent of those rural carriers to which it attempted more than 100 calls were no more than 3 percent below the average rural call answer rate. The provider must also certify that it has a process in place to investigate its performance in completing calls to individual rural telephone companies (as identified by Operating Carrier Number) for which the call answer rate is more than 3 percent below the average of the rural call answer rate for all rural telephone companies to which it attempted more than 100 calls.<sup>19</sup>

15. The NPRM seeks comment on this second proposed safe harbor, including whether the second proposed safe harbor's proposed thresholds are reasonable and appropriate, whether the safe harbor should make some allowance for any potential difference in call answer rates between residential and business customers, whether a weekly measurement requirement would reveal call-completion problems that a monthly measurement would mask, and whether three months of past information is sufficient if any investigation of rural call completion or service quality issues is deemed necessary.

16. The NPRM also seeks comment on whether the rules proposed should expire at the end of the intercarrier compensation reform transition period or some other point in view of the possibility that intercarrier compensation reform should eliminate the primary incentives for cost-saving practices that appear to be undermining the reliability of rural telephone service.<sup>20</sup> The NPRM seeks comment on whether a sunset provision would reduce the burden of compliance, whether rural consumers would be sufficiently protected from call completion problems if the rules expire at that time, alternative sunset dates, and whether the proposed requirements should remain in effect until the Commission modifies the relevant rules.<sup>21</sup>

### 3. Proposed Ring Signaling Integrity Requirements

17. The NPRM proposes a new rule that would prohibit both originating and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted.<sup>22</sup> The proposed rule also requires originating providers to convey audio tones and announcements sent by the terminating provider to the calling party.<sup>23</sup> The NPRM seeks comment on this proposed rule, including whether it is consistent with prior telephony industry practice, telephone user expectation with respect to the meaning of audible ringing, and recommended industry practice for TDM- and IP-based telephony interworking. The NPRM also seeks comment on the benefits and burdens associated with this proposed rule. Finally, the NPRM seeks comment on the need to extend these requirements to non-interconnected VoIP providers, including the Commission's authority to do so, and on whether, for technical reasons, any aspect of this proposed rule should be applied differently to originating CMRS carriers.

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<sup>19</sup> *Id.*

<sup>20</sup> *See* NPRM Section III.A.3.

<sup>21</sup> *Id.*

<sup>22</sup> *See* NPRM Section III.B.

<sup>23</sup> *Id.*; *see also* NPRM Appendix A, Proposed Rule 64.2201.

## B. Legal Basis

18. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 2, 4(i), 201, 202, 218, 220(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 201, 202, 218, 220(a), 403.

## C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

19. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>24</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>25</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>26</sup> A small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>27</sup>

20. **Small Businesses.** Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.<sup>28</sup>

21. **Wired Telecommunications Carriers.** The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.<sup>29</sup> Thus, under this size standard, the majority of firms can be considered small.

22. **Local Exchange Carriers (LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>30</sup> According to Commission data, Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.<sup>31</sup> Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM.

23. **Incumbent Local Exchange Carriers (incumbent LECs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired

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<sup>24</sup> See 5 U.S.C. § 603(b)(3).

<sup>25</sup> See 5 U.S.C. § 601(6).

<sup>26</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>27</sup> See 15 U.S.C. § 632.

<sup>28</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” available at [http://www.sba.gov/sites/default/files/FAQ\\_Sept\\_2012.pdf](http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf) (last accessed Jan. 24, 2012).

<sup>29</sup> See *id.*

<sup>30</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>31</sup> See *id.*

Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>32</sup> According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers.<sup>33</sup> Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees.<sup>34</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the NPRM.

24. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”<sup>35</sup> The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.<sup>36</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

25. **Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>37</sup> According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.<sup>38</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees.<sup>39</sup> In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.<sup>40</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>41</sup> Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees.<sup>42</sup> Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

26. **Interexchange Carriers (IXCs).** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest

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<sup>32</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>33</sup> See *Trends in Telephone Service*, Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*).

<sup>34</sup> See *id.*

<sup>35</sup> 5 U.S.C. § 601(3).

<sup>36</sup> See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a); see also 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. See 13 C.F.R. § 121.102(b).

<sup>37</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>38</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>39</sup> See *id.*

<sup>40</sup> See *id.*

<sup>41</sup> See *id.*

<sup>42</sup> See *id.*

applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>43</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>44</sup> Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>45</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

27. **Prepaid Calling Card Providers.** Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>46</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.<sup>47</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards.<sup>48</sup> Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees.<sup>49</sup> Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

28. **Local Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>50</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000.<sup>51</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services.<sup>52</sup> Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees.<sup>53</sup> Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

29. **Toll Resellers.** The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>54</sup> Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than

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<sup>43</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>44</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>45</sup> See *id.*

<sup>46</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

<sup>47</sup> See *id.*

<sup>48</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>49</sup> See *id.*

<sup>50</sup> See 13 C.F.R. § 121.201, NAICS code 517911.

<sup>51</sup> See *id.*

<sup>52</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>53</sup> See *id.*

<sup>54</sup> See 13 C.F.R. § 121.201, NAICS code 517911.



1,000.<sup>55</sup> Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.<sup>56</sup> Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees.<sup>57</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

30. **Other Toll Carriers.** Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>58</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees.<sup>59</sup> Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>60</sup> Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees.<sup>61</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

31. **Wireless Telecommunications Carriers (except Satellite).** Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>62</sup> Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.<sup>63</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>64</sup> For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year.<sup>65</sup> Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more.<sup>66</sup> Thus, under this category and the associated small business size standard, the Commission estimates that the

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<sup>55</sup> *See id.*

<sup>56</sup> *See Trends in Telephone Service* at Table 5.3.

<sup>57</sup> *See id.*

<sup>58</sup> *See* 13 C.F.R. § 121.201, NAICS code 517110.

<sup>59</sup> *See id.*

<sup>60</sup> *See Trends in Telephone Service* at Table 5.3.

<sup>61</sup> *See id.*

<sup>62</sup> *See* 13 C.F.R. § 121.201, NAICS code 517210.

<sup>63</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging,” *available at* <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517211&search=2002%20NAICS%20Search> (last accessed Jan. 31, 2013); U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications,” *available at* <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517212&search=2002%20NAICS%20Search> (last accessed Jan. 31, 2013).

<sup>64</sup> 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>65</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

<sup>66</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

32. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>67</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>68</sup> Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

33. **Cable and Other Program Distribution.** Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: “This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.”<sup>69</sup> The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees.<sup>70</sup> Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the NPRM.

34. **Cable Companies and Systems.** The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission’s rules, a “small cable company” is one serving 400,000 or fewer subscribers, nationwide.<sup>71</sup> Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard.<sup>72</sup> In addition, under the Commission’s rules, a “small system” is a cable system serving 15,000 or fewer subscribers.<sup>73</sup> Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000-19,999 subscribers.<sup>74</sup> Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the NPRM.

35. **All Other Telecommunications.** The Census Bureau defines this industry as including “establishments primarily engaged in providing specialized telecommunications services, such as satellite

<sup>67</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>68</sup> See *id.*

<sup>69</sup> U.S. Census Bureau, 2007 NAICS Definitions, “517110 Wired Telecommunications Carriers” (partial definition), available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517110&search=2007%20NAICS%20Search> (last accessed Jan. 31, 2013).

<sup>70</sup> See 13 C.F.R. § 121.201, NAICS code 517110.

<sup>71</sup> See 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. See *Implementation of Sections of the 1992 Cable Television Consumer Protection and Competition Act: Rate Regulation*, MM Docket Nos. 92-266, 93-215, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 para. 28 (1995).

<sup>72</sup> These data are derived from R.R. BOWKER, BROADCASTING & CABLE YEARBOOK 2006, “Top 25 Cable/Satellite Operators,” pages A-8 & C-2 (data current as of June 30, 2005); WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “Ownership of Cable Systems in the United States,” pages D-1805 to D-1857.

<sup>73</sup> See 47 C.F.R. § 76.901(c).

<sup>74</sup> WARREN COMMUNICATIONS NEWS, TELEVISION & CABLE FACTBOOK 2006, “U.S. Cable Systems by Subscriber Size,” page F-2 (data current as of Oct. 2007). The data do not include 851 systems for which classifying data were not available.

tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.”<sup>75</sup> The SBA has developed a small business size standard for this category; that size standard is \$30.0 million or less in average annual receipts.<sup>76</sup> According to Census Bureau data for 2007, there were 2,623 firms in this category that operated for the entire year.<sup>77</sup> Of these, 2478 establishments had annual receipts of under \$10 million and 145 establishments had annual receipts of \$10 million or more.<sup>78</sup> Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

#### **D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

36. In the NPRM, the Commission proposes to require covered providers to report to the Commission the monthly call answer rate to each rural OCN to which 100 or more calls were attempted during the calendar month and the nonrural monthly overall average once per calendar quarter. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

37. In the NPRM, the Commission also proposes a rule requiring that an originating facilities-based provider or the first facilities-based provider in the call path record for each long-distance call it attempts, in addition to calling party number, called party number, date and time: (1) whether the call attempt was handed off to an intermediate provider and, if so, which intermediate provider; (2) whether the call attempt was going to a rural carrier and, if so, which rural carrier as identified by its OCN; (3) whether the call attempt was interstate; and (4) whether the call attempt was answered. The Commission also proposes to require these providers to retain these records for a period including the six most recent calendar months. Compliance with these reporting obligations may affect small entities, and may include new administrative processes. We note parenthetically that in the NPRM, the Commission seeks comment on the benefits and burdens of these proposals, and on whether the categories of records to be retained are normally collected in the ordinary course of business.

#### **E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

38. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”<sup>79</sup>

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<sup>75</sup> U.S. Census Bureau, “2007 NAICS Definitions: 517919 All Other Telecommunications,” *available at* <http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517919&search=2007%20NAICS%20Search> (last accessed Jan. 31, 2013).

<sup>76</sup> See 13 C.F.R. § 121.201, NAICS code 517919.

<sup>77</sup> U.S. Census Bureau, 2007 Economic Census, Subject Series: Information, Table 4, “Establishment and Firm Size: Receipts Size of Firms for the United States: 2007 NAICS Code 517919” (issued Nov. 2010).

<sup>78</sup> See *id.*

<sup>79</sup> 5 U.S.C. § 603(c)(1)–(c)(4).

39. The Commission is aware that some of the proposals under consideration will impact small entities by imposing costs and administrative burdens. For this reason, the NPRM proposes a number of measures to minimize or eliminate the costs and burdens generated by compliance with the proposed rules.

40. First, The NPRM proposes to require only those originating long-distance providers and other covered providers with more than 100,000 retail long-distance subscribers (business or residential) to retain the basic information on call attempts and to periodically report the summary analysis of that information to the Commission.

41. The NPRM proposes two safe harbor provisions that could reduce the economic impact on small entities. In the first safe harbor, the NPRM proposes to relieve covered providers of their reporting and retention obligations if they certify that: they restrict by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path before the call reaches the terminating provider; any nondisclosure agreement with an intermediate provider permits the originating provider to reveal the intermediate provider's identity to the Commission and to any rural carrier whose incoming long-distance traffic is affected by the intermediate provider's performance; and they have a process in place to monitor the performance of their intermediate providers in completing calls to individual rural telephone companies as identified by Operating Carrier Number.<sup>80</sup>

42. In the second safe harbor, the NPRM also proposes to reduce to three months a covered provider's record retention obligations and eliminate its reporting obligations if it certifies annually that for each of the preceding 12 months: (1) its average call answer rate for all rural carriers to which the provider attempted more than 100 calls in a month was no more than 2 percent less than the average call answer rate for all calls it placed to nonrural carriers in the same month; and (2) the call answer rates for 95 percent of those rural carriers to which it attempted more than 100 calls were no more than 3 percent below the average rural call answer rate. A covered provider must also certify that it has a process in place to investigate its performance in completing calls to individual rural telephone companies (as identified by Operating Carrier Number) for which the call answer rate is more than 3 percent below the average of the rural call answer rate for all rural telephone companies to which it attempted more than 100 calls.<sup>81</sup>

43. In the NPRM, the Commission also seeks comment on whether the proposed rules should include a sunset provision to account for the possibility that reforms to the intercarrier compensation rules may alleviate many of the rural call completion problems addressed in the Notice.<sup>82</sup> Such a sunset provision could limit the costs and burdens of compliance with the proposed rules by establishing an end date for those costs and burdens.

44. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding. The proposed ring signaling integrity requirements in the NPRM could have an economic impact on both small and large entities. However, the Commission believes that any impact of such requirements is outweighed by the accompanying benefits to the public and to the operation and efficiency of the long distance industry.

#### **F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

45. None.

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<sup>80</sup> See NPRM para. 33.

<sup>81</sup> See NPRM para 35.

<sup>82</sup> See NPRM Section III.B.3.

**STATEMENT OF  
CHAIRMAN JULIUS GENACHOWSKI**

Re: *Rural Call Completion*, WC Docket No. 13-39

Since the Commission first started receiving complaints about rural call completion issues, the evidence has grown overwhelming: in too many towns across the country, the basic ability of all Americans to reliably receive phone calls—a bedrock of America’s communication policy—has come into doubt. This has serious economic, safety, and other consequences.

We’ve seen some evidence of improvement, but not nearly enough. And although, as we’ve come to learn, the causes of rural call failures can be complex and the responsible parties difficult to trace, one thing is clear: This has got to stop. The FCC has a fundamental responsibility to ensure phone calls complete reliably.

Today’s Notice of Proposed Rulemaking is the next important step in an ongoing, multipronged strategy to attack this difficult problem. My colleagues and I take very seriously any proposal to increase data collection and reporting burdens on communications providers. And we have no illusions—the proposals in today’s item may impose meaningful new burdens on some carriers. But we must get to the bottom of this issue. The data we propose to collect here will allow us to do that, and to vigorously enforce our rules.

I thank my colleagues for their support of these proposals.



**STATEMENT OF  
COMMISSIONER ROBERT M. McDOWELL**

Re: *Rural Call Completion*, WC Docket No. 13-39

Increasingly, rural customers and the carriers that serve them have raised concerns that phone calls placed to rural areas of America have not been completed. This scenario can have serious implications on many aspects of communications in rural parts of the nation. It can impede public safety, frustrate businesses from effectively engaging in commerce, and interfere with rural consumers' ability to communicate freely with their family and friends. As such, I support this Notice of Proposed Rulemaking which is intended to provide the Commission with data to analyze and eventually address this problem. I look forward to working with rural consumers, providers, and my colleagues so we can craft solutions that will most effectively address this problem in the least burdensome way.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

Re: *Rural Call Completion*, WC Docket No. 13-39

Whether a telephone call is being made from across the street or across the nation, consumers expect them to be completed. So when calls are not timely received, not only is it frustrating, it is detrimental to those seeking to conduct business, as well as for those who need to convey time-sensitive personal information. Call completion isn't simply about inconvenience for we are hearing about lost business and economic opportunities, of families unable to connect during times of crises, and of very real public safety vulnerabilities. Moreover, consumer confusion abounds when the calling party believes the called party's phone is ringing, as indicated by the fact that the calling party hears the ring numerous times, but the call is never retrieved by a person, voicemail, or answering machine. In fact, this premature ringing is contrary to the industry practice that the audible ringing only occurs when the called party's line is available, and the called party's phone is also ringing.

Since these issues arose, I have been encouraging the Chairman and our staff to take the necessary steps to resolve the rural call completion problems as expeditiously as possible. Indeed, both the Commission and the Wireline Competition Bureau have already taken several important steps to clarify the legal obligations of carriers to complete calls. In our *USF/ICC Transformation Order* released in November 2011, we confirmed that carriers cannot block, choke, or reduce or restrict traffic in any way, and the Bureau followed up with a second Order shortly thereafter, that clarifies that originating carriers can be held liable for knowing that there are completion issues and not correcting them. Moreover, our staff has been collecting real-time information from carriers and consumers to spot patterns and resolve connection issues, and they have been investigating particular carriers and their practices. In my discussions with carriers and consumers, I have been encouraging all those experiencing call completion problems to use the real-time information tools the FCC has made available to help us determine the cause and parties involved in order to resolve individual issues and investigations more quickly.

As evidenced by the unanimous issuance of this NPRM and our prior actions, this Commission takes seriously our responsibility to ensure that wired communications is available to all consumers in the U.S. Our Wireline Competition Bureau and Enforcement Bureau are carrying out our rules and policies, and I am pleased that we are adopting an NPRM that will help us better enforce our call completion requirements. Today's action will help ensure that the Commission has access to the information it needs when investigating complaints about carriers not completing calls in rural areas, and it will incentivize originating carriers to improve call completion performance. Moreover, I am pleased that the NPRM proposes to address consumer confusion, by prohibiting the premature signaling of the audible ringing to the calling party. As soon as the record is complete, we should issue an Order giving us all the tools necessary to enforce our call completion requirements.

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**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

Re: *Rural Call Completion*, WC Docket No. 13-39

For too long, rural carriers have complained about dropped calls, missed calls, and connections that fail. Reports to the Commission have shown this problem to be both persistent and widespread. In fact, one survey found that 80 percent of rural carriers have experienced rural call completion failures.

This is unacceptable. After all, failure to complete calls to rural subscribers can cut families off from relatives in rural areas, lead rural businesses to lose customers, and create dangerous delays for public safety communications.

The Notice of Proposed Rulemaking we adopt today proposes new record-keeping requirements. This means that when calls fail or quality is degraded in rural areas, the Commission will have the data necessary to go after bad actors, vigorously enforce its rules, and bring an end to this problem.

I fully support this effort and look forward to working with my colleagues to expeditiously put final rules in place.

**STATEMENT OF  
COMMISSIONER AJIT PAI**

Re: *Rural Call Completion*, WC Docket No. 13-39

The telephone network is built on a simple premise: You call a number, the phone rings, and you reach the person you are calling. The call could be local or long-distance, domestic or international. You may have to speak with an operator or pay a little extra. But in every case, the call goes through.

Or it should. Over the past three years, there has been an unusual spike in the number of calls placed to rural Americans that never reach them. A call is placed, but the phone never rings. Strange as it seems, it may now be easier to reach someone in the Alps than a cabin in Alpine, Arizona.

The reason is not clear.<sup>1</sup> If least-cost routing tables are not properly updated, for example, some calls may fall into a recursive loop and never be set up. Similarly, aging switches are still in the field, interconnected with modern equipment. These switches might fail when sent information they do not expect. And such problems could be made worse as calls sometimes bridge multiple networks with differing formats for call set-up and signaling. If technical issues like these are the cause of dropped calls, we should help the parties diagnose and cure them as swiftly as possible. Alternatively, if telephone providers are intentionally or knowingly blocking calls to rural areas, the Commission must investigate the responsible parties and hold them accountable.

I hope today's Notice of Proposed Rulemaking will help us figure out the root of the problem. To that end, our data will need to reflect the complete picture. I thus welcome the across-the-board approach the Notice takes in collecting data. It builds on and supplements the work already done by the FCC's Rural Call Completion Task Force. But I do want to make one thing clear: Although the Notice proposes to sunset the data collection about eight years from now, I hope we can do so much sooner. Rural call completion should not be a live issue eight years from now. We must resolve it much, much sooner.

Fortunately, the Commission is not alone. Hundreds of rural carriers and long-distance providers already are working together to troubleshoot issues. The Next Generation Interconnection Interoperability Forum of the Alliance for Telecommunications Industry Solutions has been coordinating efforts among carriers to identify and address technical bugs. State commissions have been actively involved as well, connecting customers and carriers and keeping our attention focused as well.

Consumers also are helping. Each time a consumer tells us about a call that did not go through, that's another data point to analyze. Each time a consumer complains to us, that's another opportunity for a rural carrier and a long-distance provider to solve the problem. Because consumer complaints likely represent only a small fraction of actual incidents, we should try to make it easier for consumers to reach us. One possibility is to create a specialized complaint form dedicated to call completion; the form that we currently use (Form 2000B) is really about billing, privacy, and service quality, not call completion.<sup>2</sup> That simple step might make it a little easier for consumers to report rural call completion matters and for the carriers to address them. And that, of course, is what this whole proceeding is all about.

My thanks go out to the staff in the Wireline Competition Bureau, Enforcement Bureau, and General Counsel's Office who have been studying rural call completion issues and put together this Notice, as well as the members of the Consumer and Governmental Affairs Bureau who have been fielding calls from the public. I look forward to collaborating with Chairman Genachowski and my fellow Commissioners to make sure all calls go through to rural America.

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<sup>1</sup> For a thorough discussion of rural call completion issues, see Letter from Michael R. Romano, National Telecommunications Cooperative Association, *et al.*, to Theresa Z. Cavanaugh & Margaret Dailey, FCC (June 13, 2011), <https://prodnet.www.neca.org/publicationsdocs/wwpdf/061311callterm.pdf>.

<sup>2</sup> FCC, Form 2000B, <http://go.usa.gov/4PR3>; *see also* <http://go.usa.gov/4PRm> (adding a header to the Form 2000B).