

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

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

SECOND REPORT AND ORDER AND
THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

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By the Commission: Chairman Pai and Commissioners Clyburn, O’Rielly, Carr, and Rosenworcel issuing separate statements.

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## I. INTRODUCTION

1. All Americans should have confidence that when a call is made to them, they will receive it. But, for Americans living in rural or remote areas of the country, too often that is not the case. Call completion problems manifest in a variety of ways—for example, callers may experience false ring tones or busy signals while the called party’s phone may never ring at all; or when a call goes through, one or both parties to a call may be unable to hear the other; or the caller ID may show an inaccurate number; or calls to rural numbers may be significantly delayed.<sup>1</sup> Regardless of how the caller and/or called party experiences a call completion problem, the failures have serious repercussions, imposing needless economic and personal costs, and potentially threatening public safety in local communities.<sup>2</sup>

2. The actions that we take today demonstrate and reflect our continued commitment to solve the ongoing problems in the completion of long-distance telephone calls to rural areas using a multi-faceted approach requiring diverse solutions and aggressive action by all participants in the call completion process. Based on the record before us and our experience over the last five years, we adopt new measures, and seek comment on others, to better tackle the problem of call completion and ensure that calls are indeed completed to all Americans—including those in rural America.

## II. BACKGROUND

3. A key reason for rural call completion issues is that calls to rural areas are often handled by numerous different providers.<sup>3</sup> As a result, we find it helpful to consider how a call path unfolds in examining whether there are additional and/or more effective solutions to address this troublesome issue. A provider of long-distance voice service makes the initial long-distance call path choice.<sup>4</sup> In lieu of transmitting a long-distance call through a direct connection with the service provider that will terminate the call, the long-distance service provider may send the call to an intermediate provider before the call reaches its destination.<sup>5</sup> Similarly, each intermediate provider in a call path may either send a call to its destination, or it may send the call to another intermediate provider. The last intermediate provider in a call path routes the call to a terminating tandem or terminating provider, generally the call recipient’s phone company.<sup>6</sup> This call completion process is not automatic, as “[c]ontractual agreements must be established between *all* interconnecting companies.”<sup>7</sup> Long-distance providers that select the initial long-distance call path do not necessarily contract directly with every intermediate provider in the call path.

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<sup>1</sup> *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16160-61, paras. 13-14 (2013) (*RCC Order* or *RCC FNPRM*); see also *FCC Enforcement Advisory: Rural Call Completion*, Public Notice, 28 FCC Rcd 10347, 10348 (EB 2013).

<sup>2</sup> *RCC Order*, 28 FCC Rcd at 16161, para. 14.

<sup>3</sup> See *Rural Call Completion*, WC Docket No. 13-39, Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 6047, 6048, para. 2 (2017) (*RCC 2nd FNPRM*); see also *RCC Order*, 28 FCC Rcd at 16163, para. 17.

<sup>4</sup> 47 CFR § 64.2101.

<sup>5</sup> See *id.*; *RCC Order*, 28 FCC Rcd at 16162, paras. 16-17. See generally ATIS, *ATIS-0300106 - Intercarrier Call Completion/Call Termination Handbook* 26-30 (2015), <https://www.atis.org/docstore/product.aspx?id=26780> (ATIS RCC Handbook) (explaining call traffic routing).

<sup>6</sup> See generally ATIS RCC Handbook at 26-30.

<sup>7</sup> *Id.* at 22 (emphasis in original).

However, they have the ability to control the call path both through their selection of the initial call path and because they may impose restrictions on whether and in what circumstances intermediate providers with which they contract may employ additional intermediate providers.<sup>8</sup>

4. The Commission has long recognized that providers' incentives to minimize their intercarrier compensation payments contributes to problems involving carriers blocking or degrading traffic to rural areas.<sup>9</sup> Due to the high rates that long-distance providers incur to terminate long-distance calls to rural rate-of-return carriers, long-distance providers have an incentive to reduce the per-minute cost of calls to rural areas by handing them off to less expensive intermediate providers. In addition, both long-distance and intermediate providers may have poor incentives to ensure that calls to rural areas are actually completed properly.<sup>10</sup>

5. The Commission has taken a number of actions in recent years to address rural call completion issues. In the 2011 *USF/ICC Transformation Order*,<sup>11</sup> the Commission adopted a plan to gradually reduce most termination charges, including those of rate-of-return carriers, to a bill-and-keep methodology.<sup>12</sup> The *USF/ICC Transformation Order* mandated significant reductions in intrastate and interstate terminating switched access rates—the rates that incumbent and competitive local exchange carriers (LECs) assess interexchange carriers for terminating long-distance calls<sup>13</sup>—which are being implemented over a multi-year transition period.<sup>14</sup> Once complete, comprehensive reform of intercarrier compensation is likely to diminish the financial incentive structure that contributes to rural call completion issues.<sup>15</sup> In the *USF/ICC Transformation Order*, the Commission also reaffirmed the Commission's call blocking policy; made clear that carriers' blocking of VoIP-PSTN traffic is prohibited; and clarified that interconnected and one-way VoIP providers are prohibited from blocking voice traffic

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<sup>8</sup> See *infra* Parts III.A.1-2.

<sup>9</sup> *RCC Order*, 28 FCC Rcd at 16163, para. 17.

<sup>10</sup> See *RCC 2nd FNPRM*, 32 FCC Rcd at 6048, para. 2; *RCC Order*, 28 FCC Rcd at 16163, para. 17.

<sup>11</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 a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform-Mobility Fund*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>12</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17676, para. 34; *RCC 2nd FNPRM*, 32 FCC Rcd at 6048, para. 3. Not all terminating switched access rates will move to bill-and-keep under the current transition, however. For example, rate-of-return incumbent local exchange carriers' interstate terminating tandem switching and transport rates remain merely capped at their December 29, 2011 levels, with intrastate rates for such service being capped at interstate levels. See 47 CFR §§ 51.909(a)(2); 51.909(c). Thus, providers of the switched access services to which such rates apply will continue to assess terminating access charges on interexchange carriers unless and until the Commission adopts further reform.

<sup>13</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17676-77, para. 35.

<sup>14</sup> *Id.* at 17935-36, para. 801 & Fig. 9. The transition began July 1, 2012 and will end July 1, 2018 for incumbent LECs regulated under the price cap regime and July 1, 2020 for incumbent LECs regulated under the rate-of-return regime. *Id.*

<sup>15</sup> See *RCC 2nd FNPRM*, 32 FCC Rcd at 6048, para. 3; *RCC Order*, 28 FCC Rcd at 16196, 16198, paras. 101, 104. Such complete reform would require further implementing actions by the Commission, a process which is ongoing. See *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, Public Notice, 32 FCC Rcd 6856 (WCB 2017); *Wireline Competition Bureau Announces the Comment Cycle For Refreshing the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, Public Notice, 32 FCC Rcd 7286 (WCB 2017); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 18111-13 and 18117, paras. 1297, 1306-13, and 1320-21.

to or from the PSTN.<sup>16</sup> Similarly, in 2007 and 2012, the Wireline Competition Bureau (the Bureau) clarified that carriers are prohibited from blocking, choking, reducing, or restricting calls, including performing such actions to avoid termination charges.<sup>17</sup>

6. *RCC Rulemaking.* In the *RCC Order*, the Commission codified the long-standing industry practice of prohibiting false ring signaling,<sup>18</sup> and established recording, retention, and reporting rules intended to improve its ability to monitor the delivery of long-distance calls to rural areas and aid enforcement action in connection with providers' call completion practices.<sup>19</sup> Pursuant to these rules, providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines (counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates) ("covered providers"<sup>20</sup>) must record and retain, for six months, specific information about each call attempt to a rural operating company number (OCN)<sup>21</sup> from subscriber lines for which the providers make the initial long-distance call path choice.<sup>22</sup> Covered providers have been required to file quarterly reports with the Commission reporting aggregated information.<sup>23</sup> The Commission also adopted a safe harbor that reduces recording, retention, and reporting requirements for covered providers that limit the number of intermediate providers in a call path to terminating provider or terminating tandem.<sup>24</sup>

7. Anticipating "that the need for the recording, retention, and reporting rules would decrease, particularly as the transition to a bill-and-keep regime continued,"<sup>25</sup> the Commission instructed the Bureau to analyze the eight sets of reports submitted during the first two years of the data collection, and publish a report on the rules' effectiveness for public comment.<sup>26</sup> The Bureau's resulting June 2017 RCC Data Report "shows, among other things: (1) a difference of approximately two percent between

<sup>16</sup> See *USF/ICC Transformation Order*, 26 FCC Rcd at 17903, 18028-29, paras. 734, 973-974.

<sup>17</sup> See generally *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, para. 1 (WCB 2012) (*2012 Declaratory Ruling*); *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, Declaratory Ruling and Order, 22 FCC Rcd 11629 (WCB 2007).

<sup>18</sup> *RCC Order*, 28 FCC Rcd at 16201-03, paras. 111-15. False ring signaling occurs when an originating or intermediate provider prematurely triggers audible ring tones to the caller before the call setup request has actually reached the terminating provider, leading the calling party to believe that the called party's phone is ringing when in fact it is not. *RCC 2nd FNPRM*, 32 FCC Rcd at 6049, para. 4 n 12.

<sup>19</sup> *RCC Order*, 28 FCC Rcd at 16164, para. 19.

<sup>20</sup> *Id.* at 16164-66, paras. 19-20. Covered providers "include local exchange carriers (LECs), interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, and VoIP service providers." *Id.*

<sup>21</sup> The term "OCN" means a four-place alphanumeric code that uniquely identifies a local exchange carrier. 47 CFR § 64.2101. The term "rural OCN" means an operating company number that uniquely identifies an incumbent LEC that is a rural telephone company as that term is defined in section 51.5 of the Commission's rules. *Id.*; see also *id.* § 51.5 (defining "rural telephone company"); 47 U.S.C. § 153(44) (same).

<sup>22</sup> *RCC Order*, 28 FCC Rcd at 16182-84, paras. 61-65; 47 CFR § 64.2103.

<sup>23</sup> *RCC Order*, 28 FCC Rcd at 16182-84, paras 65-67; *RCC 2nd FNPRM*, 32 FCC Rcd at 6049-50, para. 4; 47 CFR § 64.2105.

<sup>24</sup> *RCC Order*, 28 FCC Rcd at 16191-92, paras. 85-86; 47 CFR § 64.2107. Under the safe harbor regime, qualifying providers that employ two or fewer intermediate providers in the call path, though required to report and retain data in the same manner as any non-qualifying provider, are limited to one year of reporting and are required to retain the information for only the three most recent complete calendar months. *RCC Order*, 28 FCC Rcd at 16192-93, para. 89.

<sup>25</sup> *RCC Order*, 28 FCC Rcd at 16198, paras. 104-05.

<sup>26</sup> *Id.* at 16198, para. 105.

covered providers' median call answer rates for rural and non-rural OCNs in the aggregate; and (2) no improvement in covered providers' call answer rates to rural OCNs in the aggregate during that period."<sup>27</sup> The Report also found a number of issues with the collected data, however, that "impact the reliability of the data collection and preclude us from drawing firm conclusions from the data."<sup>28</sup> As a result, the Bureau recommended that the Commission "consider eliminating the recording, retention, and reporting rules and replacing them with new rules for covered providers that may more effectively address rural call completion problems."<sup>29</sup>

8. The Commission subsequently released the *RCC 2nd FNPRM*, which proposed and sought comment on steps to address rural call completion issues in a more effective and less burdensome manner than the existing recording, retention, and reporting rules.<sup>30</sup> Specifically, the Commission sought comment on modifying or eliminating the existing recording, retention, and reporting rules, and proposed to "hold covered providers responsible for monitoring rural call completion performance, and particularly maintaining the accountability of their intermediate providers in the event of poor performance."<sup>31</sup>

9. *Enforcement Actions and Complaints.* Notably, the Commission has also addressed rural call completion issues through enforcement actions and complaints processes. The Enforcement Bureau has completed investigations of the rural call routing practices and performance of several long-distance voice service providers, resulting in consent decrees with five such providers which have included significant commitments by these providers to improve their call completion practices going forward.<sup>32</sup> The Commission has also established dedicated avenues for rural consumers and carriers to report rural call completion problems.<sup>33</sup> Trends in these complaints are mixed. Complaints about rural call completion filed by rural carriers with the Enforcement Bureau decreased by about 15 percent from 2016 to 2017, following a decrease of 45 percent from 2015 to 2016.<sup>34</sup> On the other hand, consumer complaints increased approximately 81% from 2016 to 2017; the number of complaints in 2017 is about 64% higher than in 2015 but about 8% lower than in 2014.<sup>35</sup>

10. *RCC Act.* On February 26, 2018, the President signed the Improving Rural Call Quality and Reliability Act of 2017 ("RCC Act") into law.<sup>36</sup> The RCC Act adds a new section 262 to the

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<sup>27</sup> Rural Call Completion, Report, WC Docket No. 13-39, 32 FCC Rcd 4980, 4981, para. 2 (WCB 2017) (RCC Data Report).

<sup>28</sup> *Id.* at 4981, 4989-95, paras. 2, 23-37. These issues include both variations in how covered providers report their data as well as variations in the type of data they report. *Id.* at 4989-95, paras. 23-37.

<sup>29</sup> *Id.* at 4995, para. 38.

<sup>30</sup> See *RCC 2nd FNPRM*, 32 FCC Rcd 6057-59, paras. 25-28.

<sup>31</sup> *Id.* at 6052, para. 11.

<sup>32</sup> See *inContact, Inc.*, Order and Consent Decree, 31 FCC Rcd 4329 (2016); *Verizon*, Adopting Order and Consent Decree, 30 FCC Rcd 245 (EB 2015); *Matrix Telecom, Inc.*, Order and Consent Decree, 29 FCC Rcd 5709 (EB 2014); *Windstream Corp.*, Order and Consent Decree, 29 FCC Rcd 1646 (EB 2014); *Level 3 Commc'ns, LLC*, Order and Consent Decree, 28 FCC Rcd 2274 (EB 2013); see also *RCC 2nd FNPRM*, 32 FCC Rcd at 6051, para. 8.

<sup>33</sup> See *RCC 2nd FNPRM*, 32 FCC Rcd at 6051, para. 8.

<sup>34</sup> See *id.* at 6051, para. 8 (providing 2015-2016 calculation). The 2016-2017 comparison is based on staff calculations.

<sup>35</sup> Due to variations in the categorization of consumer complaints received by the Commission, these numbers are approximations and may not reflect an exact total of the rural call completion complaints submitted by consumers. To calculate these figures, staff excluded high volumes of duplicate complaints from the same complainant. If a carrier files a complaint through the consumer portal, it is counted as a consumer complaint for purposes of this evaluation.

<sup>36</sup> Improving Rural Call Quality and Reliability Act of 2017, Pub. L. No. 115-129 (2018) ("RCC Act").

Communications Act of 1934 (the “Act”), the full text of which is in Appendix A below. The RCC Act requires us to develop: (1) a publicly available registry of intermediate providers, and (2) service quality standards for the transmission of covered voice communications by intermediate providers.<sup>37</sup> We must promulgate rules establishing the registry within 180 days of enactment, and we must promulgate rules establishing service quality standards within one year of enactment.<sup>38</sup> In establishing rules implementing the RCC Act, we must “ensure the integrity of the transmission of covered voice communications to all customers in the United States” and “prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications.”<sup>39</sup>

### III. SECOND REPORT AND ORDER

11. Given our experience collecting and analyzing rural call completion data and investigating rural call completion problems identified by rural consumers, we reorient our existing rural call completion rules to better reflect strategies that have worked to reduce rural call completion problems while at the same time reducing the overall burden of our rules on providers. Our new measures are informed by the record in this proceeding and our investigations of entities that have failed to ensure that calls are appropriately routed and delivered to rural areas.

12. First, we adopt a new rule requiring “covered providers”—entities that select the initial long-distance route for a large number of lines—to monitor the performance of the “intermediate providers” to which they hand off calls. By holding a central party responsible for call completion issues, it will be less likely for calls to “fall through the cracks” along a lengthy chain of intermediate providers. The monitoring rule encourages covered providers to ensure that calls are completed, assigns clear responsibility for call completion issues, and enhances our ability to take enforcement action where needed to address persistent problems. To facilitate communication about problems that arise, we also require covered providers to make available a point of contact to address rural call completion issues. Our balanced approach ensures that covered providers exercise responsibility for rural call completion without imposing an unduly rigid or burdensome mandate; in addition, it seeks to expedite both the identification and resolution of call completion issues if and when they arise.

13. Next, we eliminate the reporting requirement for covered providers established in 2013 in the *RCC Order*.<sup>40</sup> We conclude that the existing reporting rules are burdensome on covered providers, while the resulting Form 480 reports are of limited utility to us in discovering the source of rural call completion problems and a pathway to their resolution. We further conclude that the monitoring rule we adopt will be more effective than the less-effective-than-hoped reporting obligation because it imposes a direct, substantive obligation.

#### A. Covered Provider Monitoring of Performance

##### 1. Monitoring Requirement

14. The record in this proceeding and our complaint data establish that rural call completion issues persist.<sup>41</sup> Covered providers have incentives both to serve customers well and minimize routing costs; but these incentives are in tension because least-cost routing can lead to poor call completion

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<sup>37</sup> *Id.* (New section 262(c)(1), (d)).

<sup>38</sup> *Id.* (New section 262(c)(1)).

<sup>39</sup> *Id.* (New section 262(c)(2)).

<sup>40</sup> *RCC Order*, 28 FCC Rcd at 16164, 16184-85, paras. 19, 65-67; *see also Rural Call Completion*, Notice of Proposed Rulemaking, 28 FCC Rcd 1569 (2013) (*RCC NPRM*).

<sup>41</sup> *See* AT&T Comments at 3; NCTA Comments at 3; ITTA Comments at 2-3; Verizon Comments at 2; *see also supra* para. 9.

performance.<sup>42</sup> While intercarrier compensation reform has the potential to greatly improve rural call completion, it is unlikely to eliminate all incentives that may lead to call completion issues in the foreseeable future.<sup>43</sup> We are committed to refining our approach to better target these important issues.

15. Building on our proposal in the *RCC 2nd FNPRM*, we specifically require that for each intermediate provider with which it contracts, a covered provider shall: (a) monitor the intermediate provider's performance in the completion of call attempts to rural telephone companies from subscriber lines for which the covered provider makes the initial long-distance call path choice; and (b) based on the results of such monitoring, take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing the intermediate provider from a particular route after sustained inadequate performance.<sup>44</sup> As explained in detail below, the monitoring requirement we adopt entails both *prospective* evaluation to prevent problems and *retrospective* investigation of any problems that arise. We also require covered providers to take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider.

16. The monitoring requirement we adopt has significant support in the record.<sup>45</sup> It encourages covered providers to ensure that calls are completed, assigns clear responsibility for call completion issues, and enhances our ability to take enforcement action. We therefore reject arguments that Commission action is unnecessary.<sup>46</sup> While sections 201 and 202 of the Act provide important

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<sup>42</sup> Compare NTCA/WTA Comments at 10 (asserting that there is a financial incentive to “find the least expensive intermediate providers to route calls, in many cases using chosen intermediaries even where the originating provider has adequate facilities to complete the call itself” and that “[g]iven the few and comparatively low cost of penalties for failing to comply with mandates to ensure that calls complete” some covered providers have little incentive to ensure proper rural call completion), with Sprint Reply at 3 (asserting that “[v]igorous competition in the retail wireless market provides strong incentives to ensure a high quality of service, including the ability to successfully complete calls to both rural and non-rural areas.”).

<sup>43</sup> See *supra* Part II (discussing intercarrier compensation reform).

<sup>44</sup> *Infra* Appx. B. We revise subsection (b) of the rule from our proposal in the *RCC 2nd FNPRM* to direct covered providers to correct performance problems, rather than hold intermediate providers accountable. To be clear, taking steps that are reasonably calculated to correct any identified performance problem with the intermediate provider often will involve holding the intermediate provider accountable for its performance. Nevertheless, we find this change to the rule text warranted to focus subsection (b) directly on resolving rural call completion problems, rather than a particular means for doing so. Additionally, the RCC Act gives us authority to hold intermediate providers accountable for meeting service quality standards, so specifically directing covered providers to hold intermediate providers accountable is less beneficial than prior to the RCC Act's enactment. We include the phrase “take steps that are reasonably calculated to” and the word “identified” consistent with our conclusion that we do not impose strict liability on covered providers. See *infra* para. 42.

<sup>45</sup> See Comcast Comments at 6-10 (“The Commission should replace its existing call reporting requirements with its proposed rule that would require covered providers to monitor the rural call completion of the intermediate providers to which covered providers directly hand off traffic.”); Sprint Comments at 7 (stating that “covered providers have a responsibility to manage their intermediate carriers and to monitor their performance, including call completion rates”); USTelecom Comments at 2 (stating that “USTelecom agrees with this view and supports the proposed rule changes”); Verizon Comments at 5 (“The proposed new Rule 64.2103 reflects a reasoned, balanced approach . . . the Commission should adopt this regime.”).

<sup>46</sup> See CTIA Comments at 2, 6 (“CTIA does not believe that any new RCC rules are necessary.”); ITTA Comments at 1-2, 5-6 (the proposals “to adopt new rural call completion requirements for covered providers are misplaced”); VON Comments at 2 (“VON is skeptical about the Commission's proposal to hold covered providers responsible for monitoring rural call completion performance”). We anticipate that the monitoring rule we adopt will ensure better call completion to rural areas by covered providers. We recognize that as a hypothetical alternative means to increase the incentive for good rural call completion performance, we could instead increase the size of penalties for violations of the Act and our rules stemming from rural call completion failures. We nonetheless find the monitoring rule we adopt necessary for several reasons. Today's *Order* details appropriate action required of covered providers to serve this goal and adopts improved substantive measures, such as requiring prospective

(continued...)

support for our rural call completion efforts,<sup>47</sup> establishing a new rule with more detailed guidelines will enhance our ability to take enforcement action and provide additional certainty to covered providers regarding the actions they must take.<sup>48</sup> The passage of the RCC Act does not obviate the need for covered provider regulation, contrary to ITTA's contention.<sup>49</sup> While we expect that implementing the RCC Act will lead to improved intermediate provider performance, we nonetheless agree with commenters who assert that covered providers have a responsibility to monitor intermediate provider performance.<sup>50</sup> The record makes clear that it is important to hold a central party responsible for call completion issues.<sup>51</sup> Given that covered providers select the initial long-distance path and therefore can choose how to route a call, we find it appropriate that they should have responsibility for monitoring rural call completion performance.<sup>52</sup> Further, a covered provider that originates a call is easier to identify than an intermediate provider in a potentially lengthy and complicated call path, facilitating enforcement where needed.

17. *Prospective Monitoring.* As part of fulfilling the monitoring requirement, covered providers have a duty to prospectively evaluate intermediate providers to prevent reasonably foreseeable problems. We agree with NASUCA that after-the-fact remediation without other preventative actions is insufficient to prevent call completion problems from occurring.<sup>53</sup> Required prospective monitoring includes regular observation of intermediate provider performance and call routing decision-making; periodic evaluation to determine whether to make changes to improve rural call completion performance;

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monitoring and disclosure of contact information. As these new measures will serve our goal to improve rural call completion, they should reduce the necessity for enforcement action, and aid our enforcement efforts when needed. Although the existence of statutory penalties may encourage compliance with the law, they should not supplant our efforts to facilitate compliance in the first instance.

<sup>47</sup> See CTIA Comments at 2 (stating that “the Commission can continue to utilize Sections 201 and 202 of the Communications Act to evaluate carriers’ call completion practices”).

<sup>48</sup> See NTCA/WTA Comments at 7 (“Only meaningful rules and effective enforcement can effectively address and resolve rural call completion problems.”). Call completion problems persist as to both traditional telephony and VoIP. See *RCC Order*, 28 FCC Rcd at 16166-67, paras. 22-23 (stating that “data and comments filed in the record indicate that calls that originated with VoIP service providers, like other originating providers, face significant rural call completion issues”); see also *USF/ICC Transformation Order*, 26 FCC Rcd at 18029, paras. 973-74 (applying prohibition on call blocking to VoIP-PSTN traffic). Therefore, we reject VON’s argument that we should continue to allow VoIP providers to self-regulate. See VON Comments at 2.

<sup>49</sup> See ITTA Comments at 4-6 (arguing that the RCC Act obviates the need for covered provider requirements); but see NTCA et al. Feb. 18, 2014 Reply Comments at 5 (“obligations imposed on intermediate providers should [not] in any way undermine or reduce the obligations of originating providers to assure that rural calls are completed . . . the problems must be addressed on multiple fronts”). In the *Further Notice*, we seek comment on whether to change the monitoring requirements in light of the service quality standards for intermediate providers under consideration, for instance by creating a safe harbor for covered providers who work with intermediate providers that meet our quality standards. See *infra* Part IV.I.

<sup>50</sup> See, e.g., Sprint Comments at 7; Comcast Comments at 6-10; USTelecom Comments at 2.

<sup>51</sup> Cf. NCTA Comments at 2-4 (arguing that a lack of accountability and clarity in the call path contributes to rural call completion problems); NTCA/WTA Comments at 12-14 (identifying problems that occur in attenuated call path and difficulties addressing them). *Contra* ITTA Comments at 5 (arguing that a rural call completion solution should be focused on intermediate providers alone).

<sup>52</sup> See *infra* Part III.A.2 (explaining further the basis for holding covered providers accountable for rural call completion performance).

<sup>53</sup> See NASUCA Comments at 3 (“The goal should be expanded to include the prevention of call completion failures in the first instance. A reliable network exists when industry takes proactive and reactive measures to enhance the likelihood that call attempts succeed.”); cf. NTCA/WTA Comments at 10-16 (arguing that covered providers should be required to not just monitor their intermediate providers, but actively manage their networks in accordance with industry best practices).



and actions to promote improved call completion performance where warranted.<sup>54</sup> To ensure consistent prospective monitoring and facilitate Commission oversight, we expect covered providers to document their processes for prospective monitoring and identify staff responsible for such monitoring functions in the written documentation, and we expect covered providers to comply with that written documentation in conducting the required prospective monitoring.

18. We agree with numerous commenters that covered providers must have flexibility in determining and conducting prospective monitoring that is appropriate for their respective networks and mixes of traffic.<sup>55</sup> Covered providers have unique “network-specific demands and customer expectations”<sup>56</sup> and we agree that “a one-size-fits-all implementation” could unduly limit their ability to meet those demands and expectations.<sup>57</sup> We therefore provide covered providers the flexibility to determine the standards and methods best suited to their individual networks. We agree with Comcast that regardless of how a covered provider engages in monitoring, its approach must involve comparing rural and non-rural areas to ensure that Americans living in rural areas are receiving adequate service.<sup>58</sup> Covered providers may make this comparison based on any measures reasonably calculated to evaluate call completion efficacy.<sup>59</sup> Although we do not believe that it should be unduly difficult for covered providers to evaluate and compare how their intermediate providers perform in delivering traffic to individual rural OCNs, we also note that the Bureau’s RCC Data Report illustrates some challenges of metrics-based evaluations.<sup>60</sup> Accordingly, we encourage providers to explore and test a wide range of approaches and, where successful, share those solutions with industry peers and the Commission.

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<sup>54</sup> See NASUCA Comments at 4-5 (recommending that covered providers “[e]stablish and conduct standardized testing routines”; “[i]nvestigate on an ongoing basis whether downstream carriers are using properly designed and properly functioning equipment, including properly designed and properly functioning software”; and “[i]nvestigate on an ongoing basis whether downstream carriers’ switches and call paths have sufficient capacity to carry the traffic to the intended destinations”).

<sup>55</sup> See ATIS Comments at 3; CenturyLink Reply at 3; Comcast Comments at 7 (“The Commission . . . should afford providers flexibility in fashioning internal metrics to assess the performance of intermediate providers and determine what constitutes ‘inadequate performance.’”); Sprint Comments at 8 (stating that “the Commission should refrain from interfering in service providers’ network management practices or other internal operations”); CTIA Comments at 8 (“CTIA urges the Commission to ensure that any new rules do not subject carriers to a one-size-fits-all implementation.”).

<sup>56</sup> ATIS Comments at 3.

<sup>57</sup> CTIA Comments at 8 (asserting that requiring “covered providers to adopt one consistent set of practices would stifle providers’ innovation and foreclose their ability to experiment with creative or novel network management practices that could further improve the services provided to customers”).

<sup>58</sup> See Comcast Comments at 8 (asserting that “the key objective of any monitoring and management procedures should be making certain that the completion rates to rural locations, in the aggregate, are comparable to the rates for non-rural locations”).

<sup>59</sup> Such measures may include metrics such as call answer rate, call completion rate, or network effectiveness ratio; or evaluating the implementation of specific measures to ensure adequate performance that build on those we propose to require intermediate providers to meet to comply with the service quality standards required under the RCC Act. See *infra* Part IV.C. Verizon’s consent decree provides *negative traffic spikes* as one internal investigation trigger. See *Verizon*, Adopting Order and Consent Decree, 30 FCC Rcd 245, 253-54, para. 18 (EB 2015). The Verizon rural call completion study, commissioned pursuant to this consent decree, explains that a *negative spike* is a “sharp decrease from prior measurements over a short time.” Trent Stohrer, et al, Georgetown U., Sec. & Software Eng’g Research Ctr., *Issues, Analysis, and Tools for Rural Call Completion Issues* 3 n.9 (2017), <https://ecfsapi.fcc.gov/file/104180548507226/S2ERC%2013-39%20Filing.pdf>. We encourage covered providers to consider this and other possible metrics for use in fulfilling the monitoring requirement.

<sup>60</sup> See generally RCC Data Report, 32 FCC Rcd at 4989-95, paras. 20-37.

19. Conversely, we reject the argument that we should mandate the standards and best practices contained in the ATIS RCC Handbook.<sup>61</sup> The highly regarded ATIS RCC Handbook is a voluntary, industry collaborative approach to help “ensur[e] call completion” for rural telephone company customers.<sup>62</sup> We agree with commenters that mandating the ATIS RCC Handbook best practices “could have a chilling effect on future industry cooperation to develop solutions to industry problems.”<sup>63</sup>

20. However, we also agree with commenters that we should encourage adherence to the ATIS RCC Handbook best practices.<sup>64</sup> As such, while we decline to mandate compliance with the ATIS RCC Handbook best practices, we will treat covered provider adherence to all the ATIS RCC Handbook best practices as a safe harbor that establishes compliance with the monitoring rule.<sup>65</sup> We will also take the ATIS RCC Handbook best practices into account in evaluating whether a covered provider has developed sufficiently robust and compliant monitoring processes. We find that this approach will encourage adherence to the best practices while giving covered providers flexibility to tailor their practices to their particular networks and business arrangements.<sup>66</sup>

21. We strongly encourage covered providers to limit the number of intermediate providers in the call chain.<sup>67</sup> Managing the number of intermediate providers in the call chain is an ATIS RCC Handbook best practice,<sup>68</sup> and the record shows that limiting the number of intermediate providers can

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<sup>61</sup> NTCA/WTA Comments at 10-16; Letter from Jill Canfield, Vice President Legal & Industry, NTCA, to Marlene H. Dortch, Secretary, FCC, at 2 (filed Apr. 5, 2018) (NTCA Apr. 5, 2018 *Ex Parte*). The ATIS RCC Handbook intermediate provider best practices include, *inter alia*: managing the number of intermediate providers (i.e. number of “hops”); installation and use of test lines; contractual agreements with intermediate providers to govern intermediate provider conduct; management of direct and indirect looping; maintenance of sufficient direct termination capacity; non-manipulation of signaling information; inheritance of restrictions; intercarrier process requirements; and acceptance testing. ATIS RCC Handbook at 34-37. As to the manipulation of signaling information, section 64.1601(a)(2) of the Commission’s rules already requires intermediate providers within an interstate or intrastate call path that originate and/or terminate on the PSTN to pass unaltered to subsequent providers in the call path signaling information identifying the telephone number, or billing number, if different, of the calling party that is received with a call. 47 CFR § 64.1601(a)(2). In addition, section 64.2201(b) already requires intermediate providers to 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. 47 CFR § 64.2201(b).

<sup>62</sup> ATIS RCC Handbook at i.

<sup>63</sup> AT&T Comments at 7; *see also* Letter from Kevin G. Rupy, Vice President, Law & Policy, USTelecom Ass’n, to Marlene H. Dortch, Secretary, FCC, at 2 (filed Apr. 10, 2018) (USTelecom Apr. 10, 2018 *Ex Parte*) (“Given the diversity of company best practices – combined with the fact that many carriers have suitable best practices in place – there is no need for the Commission to specify or mandate them.”).

<sup>64</sup> *See* AT&T Comments at 8.

<sup>65</sup> Thus, a covered provider that adheres to all of the ATIS RCC Handbook best practices will be deemed to be compliant with the monitoring rule. This safe harbor applies only to the best practices set forth in the 2015 version of the ATIS RCC Handbook, identified above in footnote 5.

<sup>66</sup> Where a rural telephone company has a test line, we encourage a covered provider to make use of that test line as a part of its regular observation of intermediate provider performance. *See* ATIS Comments at 4 (stating that the ATIS RCC Handbook “recognizes the value of test lines, where available, in resolving call completion issues reported by the called party”); Comcast Comments at 11-12 (stating that “test lines would permit originating and intermediate service providers to test the reliability of their voice service to rural lines regularly and expeditiously”); NTCA/WTA Comments at 15-16; *see also* ATIS RCC Handbook at 41-42.

<sup>67</sup> We specifically encourage covered providers to take advantage of the Managing Intermediate Providers Safe Harbor. *See RCC Order*, 28 FCC Rcd at 16191-94, paras. 85-94.

<sup>68</sup> ATIS RCC Handbook at 34.

help ensure call completion to rural areas.<sup>69</sup> By requiring covered providers to monitor and take responsibility for the performance of their intermediate providers, we anticipate that the rules we adopt will encourage covered providers to limit the number of intermediate providers in the call chain. Nevertheless, consistent with our decision to give covered providers flexibility, we decline to *mandate* a specific limit on the number of intermediate providers in the call chain.<sup>70</sup> Such a mandate would be unduly rigid, as even those who advocate such a mandate acknowledge that exceptions would be needed.<sup>71</sup> We are concerned that a specific limit mandate conflates the number of “hops” with good hops; for example, it assumes that a small number of badly performing intermediate providers are better than multiple well-performing intermediate providers.<sup>72</sup> Although proponents of a strict limit argue that it would impose “virtually no burden on originating providers beyond the inclusion of effective clauses in their contracts with their intermediate providers,”<sup>73</sup> the record indicates that covered providers would face additional burdens if they lacked flexibility to efficiently route calls during periods of high call volume such as natural disasters and national security related events.<sup>74</sup> We note that only two covered providers have stated that they meet the Managing Intermediate Provider Safe Harbor, notwithstanding the reduced burdens under the *RCC Order* that result.<sup>75</sup> This fact suggests that the vast majority of covered providers have concluded that the benefits associated with always limiting to two the number of intermediate providers in the call path do not outweigh the associated costs.

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<sup>69</sup> See NTCA/WTA Comments at 12 (“Limiting the number of intermediate providers has proven to reduce the number of call failures.” (citation omitted)).

<sup>70</sup> *Cf. id.* at 12-14 (advocating such a limit); HD Tandem Comments at 2 (same).

<sup>71</sup> See Verizon Comments at 6 (noting that carriers can pursue call completion either by managing number of providers or through other means); *cf.* NTCA/WTA Comments at 14 (stating that “it may be appropriate to clarify that incidental or *de minimis* use of a third intermediate provider during network congestion or outages is” acceptable and that “the *de minimis* exception should be well defined and encompass no more than 1% of all traffic terminating to a rural carrier”); HD Tandem Comments at 3 (arguing that the Commission should establish an expedited waiver process for carriers with a “legitimate” need to use more than two intermediate carriers in rural call completion paths). We specifically reject HD Tandem’s proposal to allow additional intermediate providers only upon a waiver request as unduly burdensome and too slow to be compatible with the dynamic routing needs of covered providers. HD Tandem Comments at 3.

<sup>72</sup> See Hypercube Jan. 16, 2014 Comments at 9-16 (filed in response to the *RCC FNPRM*).

<sup>73</sup> NTCA/WTA Reply at 7.

<sup>74</sup> In response to the *RCC NPRM*, CenturyLink noted that “because traffic flows are constantly changing, long distance providers have used intermediate providers to handle overflow traffic in those instances where the capital investment for additional facilities cannot be justified because spikes in traffic volumes are either infrequent or unpredictable. The failure to consider these other necessary uses of intermediate providers as the FCC contemplates rules affecting the use of intermediate providers may exacerbate rather than improve rural call completion.” CenturyLink May 13, 2013 Comments at 3. For instance, it explained that “[u]nforeseeable natural and manmade disasters can produce excessively high calling volumes. When a long distance provider experiences a very high volume of originating calls from an area, it may need to use feature group trunks ordinarily used for terminating traffic in that area to originate traffic in order to avoid having to block originating calls. This may necessitate the use of one or more intermediate carriers to backfill for the temporarily lost terminating traffic capacity.” *Id.* at 3 n.10; see also ATIS *RCC Handbook* at 33 (“The performance of a network may also be negatively impacted by a disaster. These events not only cause physical damage to a network, but also compound the situation by also generating excessive customer calling attempts: Weather[;] Earthquake[;] Volcanic eruption[;] Solar activity[;] Fire, flooding, etc.[, and;] Terrorism.”).

<sup>75</sup> See Letter from Brian Benison, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, Attachment at 1-2 (July 31, 2015); Letter from John E. Benedict, Vice President, Regulatory Affairs & Regulatory Counsel, CenturyLink, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, Exhibits 1-2 (July 31, 2015).

22. While we decline to impose a strict limit on the number of intermediate providers in the call chain, we recognize that an animating concern of those who advocate for such a limit is avoiding an attenuated call path in which responsibility for problems is difficult or impossible to trace and in which no one party “owns” ensuring successful call completion.<sup>76</sup> As discussed below, we require covered providers to exercise oversight regarding their entire intermediate provider call path to rural destinations.<sup>77</sup> We therefore are able to address the underlying problem of diffuse responsibility without imposing a rigid mandate capping the number of intermediate providers.

23. *Retrospective Monitoring.* We also require covered providers to retrospectively investigate any rural call completion problems that arise. This requirement is consistent with our proposal in the *RCC 2nd FNPRM*,<sup>78</sup> which several commenters support.<sup>79</sup> Evidence of poor performance warranting investigation includes but is not limited to: persistent low answer or completion rates; unexplained anomalies in performance reflected in the metrics used by the covered provider; repeated complaints to the Commission, state regulatory agencies, or covered providers by customers, rural incumbent LECs and their customers, competitive LECs, and others; or as determined by evolving industry best practices, including the ATIS RCC Handbook.

24. We interpret the retrospective monitoring requirement as encompassing, at minimum, the duties under sections 201, 202, and 217 of the Act set forth in the *2012 Declaratory Ruling*.<sup>80</sup> In that decision, the Bureau clarified that “it is an unjust and unreasonable practice in violation of section 201 of the Act for a carrier that knows or should know that it is providing degraded service to certain areas to fail to correct the problem or to fail to ensure that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately.”<sup>81</sup> The Bureau further clarified that “adopting or perpetuating routing practices that result in lower quality service to rural or high-cost localities than like service to urban or lower cost localities (including other lower cost rural areas) may, in the absence of a persuasive explanation, constitute unjust or unreasonable discrimination in practices, facilities, or services and violate section 202 of the Act.”<sup>82</sup> Finally, the Bureau, relying on section 217 of

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<sup>76</sup> See HD Tandem Comments at 2 (asserting that if the Commission does not mandate a set number of intermediate providers, carriers would be free to hand off calls “to an unlimited series of other intermediate carriers, including various unknown carriers,” making it “nearly impossible” to enforce rural call completion rules); *cf.* NASUCA Comments at 7 (arguing that “[b]ringing visibility to the intermediate carriers would have a curative and prophylactic effect” and “tend to enhance the likelihood that companies with unsound practices or inadequate facilities stayed or were kept out of the market”).

<sup>77</sup> See *infra* Part III.A.2. The RCC Act further requires that intermediate providers register with the Commission, and precludes covered providers from using intermediate providers who are not registered. These requirements will help to ensure that covered providers only use responsible intermediate providers and can identify intermediate providers in the call path. See RCC Act (New sections 262(a)-(b)); *infra* Parts IV.A-B (proposing, among other things, that covered providers must be responsible for knowing the identity of all intermediate providers in a call path).

<sup>78</sup> See *RCC 2nd FNPRM*, 32 FCC Rcd at 6056, para. 19.

<sup>79</sup> See, e.g., Comcast Comments at 6-10; USTelecom Comments at 3-4; Verizon Comments at 5-6.

<sup>80</sup> See generally *2012 Declaratory Ruling*, 27 FCC Rcd at 1351.

<sup>81</sup> *Id.* at 1355-56, para. 12.

<sup>82</sup> *Id.* at 1357-58, para. 14. In the *2012 Declaratory Ruling*, the Bureau also stated: “Service problems could be particularly problematic for TTY and amplified telephones used by persons with hearing disabilities. Carriers that fail to ensure that services are usable by and accessible to individuals with disabilities may be in violation of section 255 of the Act. Accordingly, practices that result in disparate quality of service delivered to rural areas could be found unlawful under sections 202 and 255 of the Act.” *Id.* (citations omitted).

the Act,<sup>83</sup> stated that “if an underlying provider is blocking, choking, or otherwise restricting traffic, employing other unjust or unreasonable practices in violation of section 201, engaging in unjust or unreasonable discrimination in violation of section 202, or otherwise not complying with the Act or Commission rules, the carrier using that underlying provider to deliver traffic is liable for those actions if the underlying provider is an agent or other person acting for or employed by the carrier.”<sup>84</sup> We both affirm the *2012 Declaratory Ruling* as a clarification of the statutory provisions discussed by the Bureau and clarify that under the rule we adopt, the *2012 Declaratory Ruling* sets forth the minimum retrospective monitoring duty of covered providers.<sup>85</sup>

25. We specifically highlight that under the *2012 Declaratory Ruling*, “a carrier that *knows or should know* that calls are not being completed to certain areas, and that engages in acts (or omissions) that allow or effectively allow these conditions to persist” may be liable for a violation of section 201 of the Act.<sup>86</sup> Thus, willful ignorance will not excuse a failure by a covered provider or carrier to investigate evidence of poor performance to a rural area, such as repeated complaints, persistent low answer rates, or other indicia identified above.<sup>87</sup> When this evidence of persistent poor performance exists with respect to a rural area, the provider should know that there may be a problem with calls being completed to that area and it has a duty to investigate.<sup>88</sup> We further clarify that a covered provider or carrier may only deem the duty set forth in the *2012 Declaratory Ruling* satisfied if it: (a) promptly resolves any anomalies or problems and takes action to ensure they do not recur; or (b) determines that responsibility lies with a party other than the provider itself or any of its downstream providers and uses commercially reasonable efforts to alert that party to the anomaly or problem. Below, we provide additional direction under the monitoring rule we establish regarding how covered providers must fulfill prong (a) above with respect to intermediate providers with which they contract.

26. *Remediating Problems Detected During Retrospective Monitoring.* We require that, based on the results of the required monitoring, covered providers must take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing the intermediate provider from a particular route after sustained inadequate performance.<sup>89</sup> As USTelecom observed, “carriers have found that the most effective means of identifying and resolving call completion issues has been through their own monitoring which includes investigating specific complaints and

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<sup>83</sup> See 47 U.S.C. § 217 (“In construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.”).

<sup>84</sup> *2012 Declaratory Ruling*, 27 FCC Rcd at 1358, para. 15.

<sup>85</sup> The statutory interpretations set forth in the *2012 Declaratory Ruling* (and clarified here) apply to carriers. The duties in the *2012 Declaratory Ruling* (and clarified here) apply to covered providers, and constitute the *minimum* bounds of the retrospective monitoring requirement. Based on these determinations, we find it unnecessary to codify separately the prohibition on blocking, choking, reducing, or restricting traffic explicated in the *2012 Declaratory Ruling*. See *RCC 2nd FNPRM*, 32 FCC Rcd at 6059-60, para. 33 (seeking comment on whether to codify those prohibitions).

<sup>86</sup> *2012 Declaratory Ruling*, 27 FCC Rcd at 1355, para. 11 (emphasis added).

<sup>87</sup> See *supra* para. 23.

<sup>88</sup> See *Rural Call Completion*, Order on Reconsideration, 29 FCC Rcd 14026, 14041, para. 38 (2014) (stating that a carrier’s failure to investigate evidence of a rural call delivery problem or to correct a problem of degraded service about which it knows or should know may lead to enforcement action).

<sup>89</sup> We agree with NCTA that “isolated call failures . . . have always been inherent in the exchange of voice traffic,” and clarify that our monitoring rule does not require covered providers to take remedial action solely to address isolated downstream call failures. Letter from Steven F. Morris, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 1 (filed Apr. 10, 2018) (NCTA Apr. 10, 2018 *Ex Parte*).

ensuring that intermediate providers are held accountable.”<sup>90</sup> Correcting identified performance problems is an important part of ensuring that monitoring leads to real improvements in the call completion process.

27. Where a covered provider detects a persistent problem based on retrospective monitoring, we require the covered provider to select a solution that is reasonably calculated to be effective. A temporary and quickly abandoned solution is not acceptable.<sup>91</sup> Covered providers that do not effectively correct problems with call completion to specific areas have “allow[ed] the conditions to persist” and are subject to enforcement action for violation of the monitoring rule as well as the Act and our call blocking prohibition thereunder.<sup>92</sup>

28. Although we give covered providers flexibility in the remedial steps they choose so long as they pursue a solution that is reasonably calculated to be effective, we specifically require removing intermediate providers from routes where warranted. The ATIS RCC Handbook identifies “temporarily or permanently removing the intermediate provider from the routing path” as a best practice when an intermediate provider fails to perform at an acceptable service level,<sup>93</sup> and we agree that this must be among the remedial steps that covered providers must take where appropriate. The California Public Utilities Commission (CPUC) endorses route removal as a remedy and suggests that the only exception for removal of sufficiently badly performing intermediates “should be for call paths for which there are no alternative routes, so long as the lack of an alternative route can be reasonably documented.”<sup>94</sup> We agree with the CPUC and conclude that where an intermediate provider has sustained inadequate performance, removal from a particular route is necessary except where a covered provider can reasonably document that no alternative routes exist. Sustained inadequate performance is manifest when, even if a provider alters routing to a rural area, call completion problems with that provider persist or recur within days, weeks, or months after the routing change.

29. We reject arguments that fulfilling this obligation is unduly difficult or infeasible.<sup>95</sup> Both the record and information gathered in enforcement investigations indicates that some providers have removed intermediate providers from call paths for poor performance.<sup>96</sup> We disagree with Sprint that identifying “sustained inadequate performance” is “extraordinarily difficult”<sup>97</sup>—if a covered provider fulfills its monitoring duty, it will be able to identify persistent outliers and sources of repeated anomalies

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<sup>90</sup> USTelecom Comments at 4; *see also* AT&T Comments at 7 (describing AT&T’s success “actively managing intermediate carrier relationships”).

<sup>91</sup> *See, e.g., inContact, Inc.*, Order and Consent Decree, 31 FCC Rcd 4329 (EB 2016) (stating that provider failed to ensure its intermediate providers performed adequately in delivering service to rural consumer when the provider took action in March to correct its call delivery problems but the problem recurred in May).

<sup>92</sup> *2012 Declaratory Ruling*, 27 FCC Rcd at 1355, para. 11; *USF/ICC Transformation Order*, 26 FCC Rcd at 17903, 18028-29, paras. 734, 973-974. We agree with NCTA that requiring a “permanent” solution is too rigid and may not account for a rapidly changing marketplace. *See* NCTA Apr. 10, 2018 *Ex Parte* at 2. At the same time, a covered provider’s or carrier’s responsibility under the monitoring rule and *2012 Declaratory Ruling* is not met by a temporary route correction and nothing more; providers and carriers are also responsible for ensuring that the problems do not recur.

<sup>93</sup> ATIS RCC Handbook at 34.

<sup>94</sup> CPUC Comments at 4-5. NASUCA notes “poorly performing providers should be removed from call paths” and explains that removal is only effective when combined with preventative measures. *See* NASUCA Comments at 2-3.

<sup>95</sup> *See* VON Comments at 2; NCTA Comments at 6.

<sup>96</sup> *See, e.g.,* Sprint Comments at 9 (stating that “Sprint network access personnel constantly monitor the performance of its intermediate carriers and have the authority to remove any intermediate carrier from the routing tree promptly upon receipt of a complaint or detection of a problem”).

<sup>97</sup> *Id.* at 9 (citation omitted).

or problems. Further, the monitoring requirement we establish forecloses the argument that fulfilling the duty to correct identified performance problems is not feasible because a covered provider hands off traffic without exercising further oversight.<sup>98</sup> The covered provider has the obligation to prevent poor rural call completion performance, and business models that foreclose performing this duty are unacceptable.

30. *Scope of Monitoring Requirement—Call Attempts to Rural Competitive LECs.* Although our recording, retention, and reporting requirements are limited to calls to incumbent LECs,<sup>99</sup> we require covered providers to monitor rural call completion performance to both rural incumbent and rural competitive LECs. We recognize that rural competitive LEC subscribers also encounter rural call completion issues.<sup>100</sup> Indeed, a significant percentage of the rural call completion complaints received by the Commission are from rural competitive LECs and their customers. In 2013, the Commission declined to extend the recordkeeping requirements for call attempts to rural competitive LECs because “rural CLEC calling areas generally overlap with nonrural ILEC calling areas, calling patterns to rural CLECs differ from those to rural ILECs, and rural CLECs generally employ different network architectures.”<sup>101</sup> Although these factors illustrate recordkeeping challenges, they do not explain why covered providers have any less responsibility to complete calls to customers of rural competitive LECs or to monitor the performance of intermediate providers that deliver traffic to these providers.<sup>102</sup> To ensure that covered providers have adequate information to monitor intermediate provider performance, we direct NECA to prepare on an annual basis and make publicly available a list of rural competitive LEC OCNs in addition to continuing its annual listing of rural and non-rural incumbent LEC OCNs.<sup>103</sup> We encourage rural competitive LECs to identify their rural OCNs to NECA for use in preparation of this list.

## 2. Covered Provider Accountability

31. Under the monitoring rule we adopt today, covered providers must exercise responsibility for the performance of the entire intermediate provider call path to help ensure that calls to rural areas are completed. We will hold covered providers accountable for exercising oversight regarding the performance of all intermediate providers in the path of calls for which the covered provider makes the initial long-distance call path choice. We expect covered providers to take remedial measures where necessary and covered providers who fail to remediate problems are subject to enforcement action. As explained below, covered providers may fulfill their monitoring obligation through direct monitoring or a combination of direct monitoring and contractual restrictions.

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<sup>98</sup> Cf. VON Comments at 2.

<sup>99</sup> See *RCC Order*, 28 FCC Rcd at 16177, para. 49.

<sup>100</sup> See NTCA/WTA Comments at 15, 16-17; see also MTA Reply at 9; cf. CPUC Comments at 3-4.

<sup>101</sup> *RCC Order*, 28 FCC Rcd at 16178, para. 49 n.140

<sup>102</sup> In our proposed rule, we used the phrase “rural incumbent LEC,” which we proposed defining as an incumbent LEC that is a rural telephone company, as each of those terms are in 47 CFR § 51.5. *RCC 2nd FNPRM*, 32 FCC Rcd at 6063, Appx A. In our final rule, we replace the phrase “rural incumbent LEC” with “rural telephone company,” which encompasses both incumbent and competitive LECs.

<sup>103</sup> See 47 CFR § 64.2101 (directing NECA to update the lists of rural and non-rural incumbent LEC OCNs annually and provide them to the Wireline Competition Bureau in time for the Bureau to publish the lists no later than November 15). We recognize that because competitive LECs are not defined by incumbent service territories like incumbent LECs, identifying rural competitive LECs may be difficult in some cases, and NECA’s rural competitive LEC OCN list may not be comprehensive. We direct NECA to use best efforts to identify rural competitive LECs and their OCNs for inclusion in the list. We do not require covered providers to monitor calls to rural competitive LECs or their OCNs that do not appear on NECA’s list. We nevertheless view requiring monitoring to rural competitive LECs and NECA’s preparation of the list as valuable to promote greater call completion to the customers of rural competitive LECs that do appear on the list.

32. We find that allocating this responsibility to covered providers is appropriate because, as the entity that makes the initial long-distance call path choice, covered providers are in a position to exercise responsibility over the downstream call path to the terminating LEC.<sup>104</sup> Because the definition of “covered provider” excludes entities with low call volumes,<sup>105</sup> we expect that covered providers are of sufficient size to put resources into monitoring and negotiate appropriate provisions with any intermediate providers with which they contract.<sup>106</sup> We believe that placing responsibility on a single, readily identifiable party that ultimately controls the call path will be an effective measure in addressing rural call completion issues going forward.<sup>107</sup> Further, covered providers are in a position to promptly remedy rural call completion issues when they arise by virtue of their contractual relationships with intermediate providers and their ability to modify call routing paths, enabling rural call completion issues to be resolved without waiting for Commission enforcement action, thereby benefiting rural consumers.

33. For common carriers, the duty to monitor the entire intermediate provider call path also flows from section 217, which states that “the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.”<sup>108</sup> As the *2012 Declaratory Ruling* explained, based on section 217, “a carrier remains responsible for the provision of service to its customers even when it contracts with another provider to carry the call to its destination.”<sup>109</sup> We find it appropriate to apply this same principle to all covered providers for the reasons set forth above.<sup>110</sup>

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<sup>104</sup> As to covered provider carriers, Verizon correctly notes that our authority under sections 201 and 202, “combined with [the Commission’s] . . . longstanding policy,” makes carriers “responsible for the provision of service to their customers even when they contract with intermediate providers to carry calls to their destinations.” Verizon Reply at 5 (citing *2012 Declaratory Ruling*, 27 FCC Rcd at 1355, para. 12).

<sup>105</sup> See 47 CFR § 64.2101.

<sup>106</sup> In stating this, we do not suggest that smaller carriers are free from call completion obligations. See *2012 Declaratory Ruling*, 27 FCC Rcd at 1356, para. 12 (“Carriers do have tools to manage termination suppliers, and it would be unreasonable for a carrier not to make appropriate use of such tools to ensure calls that its customers make to rural areas terminate reliably.”).

<sup>107</sup> See *supra* para. 15.

<sup>108</sup> 47 U.S.C. § 217.

<sup>109</sup> *2012 Declaratory Ruling*, 27 FCC Rcd at 1355; see also *Operator Communications, Inc. D/B/A Oncor Communications, Inc.*, Notice of Apparent Liability for Forfeiture, 10 FCC Rcd 5647, 5649, para. 10 (1995) (“[T]he distributors’ or agents’ actions do not relieve Oncor of its independent obligation to ensure compliance with our rules, nor do they otherwise mitigate Oncor’s role in the apparent violations . . . . [T]he Act expressly prohibits a carrier from evading the requirements of the Act or the Commission’s rules or orders by hiring someone else to engage in conduct that contravenes these requirements.” (citing 47 U.S.C. § 217)); *Target Telecom, Inc.*, 13 FCC Rcd 4446, para. 13 (CCB 1998) (“[T]he actions of TTI’s marketing agents do not relieve TTI of its independent obligation to ensure compliance with our rules, nor do they otherwise mitigate TTI’s role in the apparent violations. The Communications Act deems the acts or omissions of an agent or other person acting on behalf of a common carrier to be the acts or omissions of the carrier itself.” (citing 47 U.S.C. § 217)). The Commission has applied a similar policy to carriers in the slamming context, as well as to broadcast and wireless licensees. See, e.g., *Eure Family Ltd. P’ship*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64, para. 7 (2002) (stating that the Commission “consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations”) (citing *American Paging Inc. of Virginia*, Memorandum Opinion and Order, 12 FCC Rcd 10417, 10420, para. 11 (WTB 1997)); *Silv Communication, Inc.* Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 5178, 5180-82, paras. 5-7 (2010) (stating that “carriers are held responsible for the actions of their agents” and finding a common carrier apparently liable based on misrepresentations based on a telemarketer with which it contracted).



34. We give covered providers flexibility in how they fulfill this responsibility to determine the standards and methods best suited to their individual networks.<sup>111</sup> Under the rule we adopt today, a covered provider is accountable for monitoring the performance of any intermediate provider with which it contracts, including that intermediate provider's decision as to whether calls may be handed off to additional downstream intermediate providers—and if so, how many—and whether it has taken sufficient steps to ensure that calls will be completed post-handoff. We require covered providers to *directly* monitor<sup>112</sup> the performance of intermediate providers with which they have a contractual relationship, and we decline to impose an unnecessarily burdensome mandate requiring *direct* covered provider monitoring of the entire call chain. Rather, a covered provider may manage the call path through (i) direct monitoring of all intermediate providers or (ii) a combination of direct monitoring of contracted intermediate providers and contractual restrictions on directly monitored intermediate providers that are reasonably calculated to ensure rural call completion through the responsible use of any further intermediate providers.<sup>113</sup> Contractual measures that meet this standard include limiting the use of further intermediate providers<sup>114</sup> and provisions that ensure quality call completion.<sup>115</sup> Insofar as a covered

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<sup>110</sup> See *supra* paras. 14, 15; see also *RCC 2nd FNPRM*, 32 FCC Rcd at 6057, para. 23. Thus, a covered provider is responsible when, for example, a downstream provider unlawfully injects ring tone on a call, in violation of 47 CFR § 64.2201.

<sup>111</sup> See ATIS Comments at 3; CTIA Comments at 8.

<sup>112</sup> We use the term “direct” monitoring to distinguish active monitoring from reliance solely on contractual protections. With respect to “direct” monitoring, we permit covered providers to perform the monitoring themselves or rely on a third-party vendor, acting on behalf of the covered provider, that directly monitors the intermediate provider and reports back to the covered provider. We underscore that covered providers will remain ultimately responsible for monitoring even where they use a third-party vendor.

<sup>113</sup> The ATIS RCC Handbook provides that as a best practice, contractual agreements can be used to ensure that intermediate providers meet performance expectations and hold intermediates accountable for performance. See ATIS RCC Handbook at 34.

<sup>114</sup> See, e.g., Verizon Apr. 26, 2017 *Ex Parte*, Attach at 4 (stating that Verizon requires intermediate providers to “agree to utilize no more than one additional carrier in routing before the call is delivered to the RLEC or the tandem for termination”).

<sup>115</sup> We encourage covered providers to incorporate the following provisions, suggested by NASUCA:

1. “[r]equir[ing] each downstream carrier on an ongoing basis to provide specific information regarding its system and the limitations of its system, including information regarding any difficulties its system may have interoperating with other systems using different technologies”;
2. “[r]equir[ig] each downstream carrier on an ongoing basis to provide specific information regarding any bandwidth or other capacity constraints that would prevent its system from completing calls to particular destinations at busy times”;
3. “[r]equir[ing] each downstream carrier to use properly designed and properly functioning alarms in its system that ensure immediate notice of any outages on its system”;
4. “[r]equir[ing] each downstream carrier to use properly designed and properly functioning mechanisms to ensure that the downstream carrier, if unable to complete a call, timely releases the call back to the upstream carrier”;
5. “[r]equir[ing] each downstream carrier to use properly designed and properly functioning mechanisms to ensure that the downstream carrier, if making successive attempts to route the call through different lower-tiered downstream carriers, timely passes the call to a second (or third or fourth) lower-tiered downstream carrier if a first (or second or third) lower-tiered downstream carrier cannot complete it”;
6. “[r]equir[ing] each downstream carrier to use properly designed and properly functioning mechanisms to detect and control looping, including the use of hop counters or other equivalent mechanisms that alert a carrier to the presence of a loop”;

(continued...)

provider relies on contractual restrictions rather than direct monitoring for downstream intermediate providers, the covered provider must ensure these restrictions flow down the entire intermediate provider call path.<sup>116</sup> Thus, a covered provider may not avoid liability for poor performance by asserting that a rural call went awry at an unknown point down a lengthy chain of intermediate providers or by claiming solely that its contracts with initial downstream vendors prohibited unlawful conduct. Conversely, covered providers that engage in reasonable monitoring efforts will not be held responsible for intermediate provider conduct that is not, or could not be, identified through such reasonable monitoring efforts.<sup>117</sup>

35. Our balanced approach ensures that covered providers exercise responsibility for rural call completion without imposing an unduly rigid or burdensome mandate. We therefore reject various “all-or-nothing” approaches. We reject the argument that covered providers should not bear any responsibility for the performance of non-contracted intermediate carriers.<sup>118</sup> This argument mistakenly assumes that the covered provider is unable to reach the behavior of downstream intermediate providers through directly contracted intermediate providers, and the record indicates otherwise.<sup>119</sup> Conversely, because we are able to require covered providers to exercise responsibility for the performance of the entire intermediate provider call path while providing significant flexibility in how they do so, we find mandating direct covered provider monitoring of the entire call chain unnecessarily burdensome. Similarly, we do not mandate that covered providers must directly contract with all intermediate providers in the call path. Such a requirement would be superfluous given covered provider responsibility for the overall call path, and we agree with CTIA that such a requirement would unduly prescribe provider conduct.<sup>120</sup> Nonetheless, we encourage covered providers to directly contract with all intermediate providers in the call path consistent with the ATIS RCC Handbook best practices.<sup>121</sup>

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7. “[e]stablish[ing] direct measures of quality and requir[ing] downstream carriers to meet them”;
8. “[e]stablish[ing] and implement[ing] appropriate sanctions for intermediate carriers that fail to meet standards”;
9. “[r]equir[ing] downstream carriers to manage lower-tiered downstream carriers and to hold lower-tiered downstream carriers to the same standards that they themselves are held”; and
10. “[d]efin[ing] the responsibilities of downstream carriers in a written agreement.”

NASUCA Comments at 4-6. Based on these suggestions, including “[e]stablish[ing] direct measures of quality and requir[ing] downstream carriers to meet them,” we do not agree with NCTA that “‘direct monitoring’ is only feasible with the first intermediate provider in the call path and not with subsequent intermediate providers.” NCTA Apr. 10, 2018 *Ex Parte* at 2. Additionally, we do not see any benefit to foreclosing the option to rely entirely on direct monitoring. *Cf. id.* App’x at 2 (suggesting this change).

<sup>116</sup> For example, suppose calls travel from covered provider X to intermediate providers A, B, and C in turn, and X contracts only with A. X must directly monitor A. X must ensure that A imposes contractual restrictions on B reasonably calculated to ensure rural call completion, and X must ensure that A or B imposes such restrictions on C.

<sup>117</sup> This conclusion is consistent with our decision not to impose strict liability under the monitoring rule. *See infra* para. 42; *see also* NCTA Apr. 10, 2018 *Ex Parte* at 2 (suggesting that we clarify the monitoring rule in this regard).

<sup>118</sup> *See, e.g.*, NCTA Comments at 6 (“Originating providers generally have no way to know, much less monitor, any providers in the chain other than the one with which they have an agreement. Furthermore, so long as a covered provider complies with the monitoring requirement and takes appropriate action to hold its contracted intermediate providers accountable for poor performance, the covered provider should be immune from Commission enforcement action. If any such action is necessary, the Commission should impose liability on the responsible intermediate provider, rather than indirectly imposing liability through the originating provider.”).

<sup>119</sup> *See supra* notes **Error! Bookmark not defined.-Error! Bookmark not defined.**

<sup>120</sup> *See, e.g.*, CTIA Comments at 8 (“Covered providers should be permitted flexibility to manage their networks and their relationships with intermediate providers, including by permitting covered providers to implement any

(continued....)

### 3. Covered Provider Point of Contact

36. Communication is key to addressing rural call completion issues.<sup>122</sup> Of particular importance is communication between covered providers, which make the initial long-distance call path choice, and terminating rural LECs. Together, these entities account for the beginning and end of the long-distance call path. While ATIS maintains a contact list of service provider rural call completion points of contact,<sup>123</sup> participation is voluntary,<sup>124</sup> and accordingly the list only contains contact information for a “limited number of covered providers.”<sup>125</sup> As NTCA and WTA explain, “[r]ural providers often report that they have no way to contact the responsible originating carrier or if they do, the person they contact has little to no understanding of the issue.”<sup>126</sup> Conversely, when participants in the call chain communicate, they are more likely to resolve issues that arise.<sup>127</sup>

37. We agree with NTCA and WTA that we should require covered providers to provide and maintain contact information as a low-cost measure to facilitate industry collaboration to address call completion issues.<sup>128</sup> We therefore will require covered providers to make available on their websites a telephone number and email address for the express purpose of receiving and responding promptly to any rural call completion issues. We note that ATIS requests similar information for its voluntary rural call completion service provider contact directory.<sup>129</sup> We require covered providers to ensure that the contact information available on their website is easy to find and use.<sup>130</sup> Further, covered providers must ensure that any staff reachable through this contact information has the technical capability to promptly respond

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monitoring requirements by contract if appropriate.”) *But cf.*, e.g., HD Tandem at 3-4 (asserting that “carriers should contractually bind intermediate providers to follow such explicitly identified industry best practices”).

<sup>121</sup> See ATIS RCC Handbook at 34 (“The responsibilities of intermediate providers pertinent to call completion/call termination can be defined in an agreement between the SP and the intermediate provider with which it contracts.”).

<sup>122</sup> See *RCC 2nd FNPRM*, 32 FCC Rcd at 6055-56, para. 19 (seeking comment on whether we should “require covered providers to provide and maintain updated information with the Commission on a point-of-contact within the company that is responsible for addressing rural call completion complaints (regardless of whether the complaint is from a customer of the covered provider),” and whether we should make that contact information publicly available”).

<sup>123</sup> See ATIS, Contact Directories, [https://www.atis.org/01\\_committ\\_forums/NGIIF/contact-directories/](https://www.atis.org/01_committ_forums/NGIIF/contact-directories/) (last visited Mar. 22, 2018). To participate in the ATIS NGIIF Service Provider Contact Directory for rural call completion, ATIS asks providers to submit the following information: Toll free number; contact; contact number; email; fax; website; and other information. See ATIS, ATIS NGIIF Service Provider Contact Directory (SPCD) Submission (March 2017 Form), [https://www.atis.org/01\\_committ\\_forums/NGIIF/docs/SPCD%202016%20Form.doc](https://www.atis.org/01_committ_forums/NGIIF/docs/SPCD%202016%20Form.doc).

<sup>124</sup> See ATIS, *Call Completion*, [https://www.atis.org/01\\_committ\\_forums/NGIIF/call-completion/](https://www.atis.org/01_committ_forums/NGIIF/call-completion/) (last visited Mar. 22, 2018) (“ATIS NGIIF strongly encourages telecommunications companies to provide/update information for the [Service Provider and Local Number Portability contact] directories” (emphasis in original)).

<sup>125</sup> See NTCA/WTA Comments at 16.

<sup>126</sup> *Id.* at 16.

<sup>127</sup> See Sprint Reply at 2-3 (noting a decrease of rural call completion complaints attributable to, among other things, “readily available point of contact information [which] facilitates intercompany efforts to identify and resolve network problems”).

<sup>128</sup> See NTCA/WTA Comments at 16; see also NCTA Comments at 2, 4; Sprint Reply at 2-3.

<sup>129</sup> See *supra* note 123 (describing the information ATIS asks of providers to participate in the ATIS NGIIF Service Provider Contact Directory for rural call completion).

<sup>130</sup> See NTCA Apr. 5, 2018 *Ex Parte* at 3 (expressing concern that rural providers would have to “hunt down” contact information on covered provider websites).

to and address call completion concerns.<sup>131</sup> As the operators and experts of their individual call networks, covered provider technical staff are best positioned to expeditiously solve issues as they arise and as such should be the first point of contact in identifying and resolving rural call completion issues. We expect that covered providers will ensure that there is a means by which persons with disabilities can contact them and that the contact information is available on a covered provider's website in a manner accessible by persons with disabilities.

38. Covered providers must keep the contact information current on their websites, updating with any changes within ten business days.<sup>132</sup> Furthermore, because call completion problems may jeopardize public health and safety, we require covered providers to respond to communications regarding rural call completion issues via the contact information required under the rule we adopt as soon as reasonably practicable and within no more than a single business day under ordinary circumstances.<sup>133</sup>

39. We expect NECA to use the disclosures we require to establish and maintain a central, public list of covered provider contact information that can be easily accessed by rural providers on NECA's website.<sup>134</sup> To facilitate creation of this list, we encourage covered providers to provide directly to NECA the same contact information that they make available on their websites pursuant to our requirement above, and we encourage covered providers to update NECA if they update the contact information on their websites.<sup>135</sup> We recognize that ATIS already maintains a voluntary contact directory.<sup>136</sup> We expect NECA, given its role in compiling the list of rural carriers, would work with ATIS to develop a repository of covered provider contact information, ensuring a comprehensive list of covered provider contact information is available for reference by rural providers.<sup>137</sup> An additional repository for contact information that is specific to covered providers will further encourage inter-and intra-industry cooperation to address call completion issues by offering carriers a centralized resource that facilitates communication if and when problems occur.<sup>138</sup> We also encourage *all* providers, including rural providers, to submit their own contact information for inclusion in the ATIS Service Provider Contact Directory, which continues to be a helpful single source of contact information.

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<sup>131</sup> See *supra* para. **Error! Reference source not found.** (citing record concerns that even where covered providers have published contact information, some of the reached contacts have little understanding of call completion issues).

<sup>132</sup> The same timeline for updates applies to contact information placed on websites for responding to closed captioning concerns under our television closed captioning rules. See 47 CFR § 79.1(i)(1); see also *Closed Captioning of Video Programming*, CG Docket No. 05-231, ET Docket No. 99-254, Declaratory Ruling, Order, and Notice of Proposed Rulemaking, 23 FCC Rcd 16674, 16684, para. 28 (2008) (*2008 Closed Captioning Order*).

<sup>133</sup> See NTCA Apr. 5, 2018 *Ex Parte* at 3. We recognize, however, that complex call completion issues may take longer than a single day to resolve, and clarify that this requirement refers to an initial response in such circumstances and does not indicate that all such issues must be resolved within a single business day.

<sup>134</sup> See NCTA Comments at 2, 4; see also NTCA Apr. 5, 2018 *Ex Parte* at 3.

<sup>135</sup> We would expect NECA to update its contact information directory regularly so that it remains current.

<sup>136</sup> See ATIS, Contact Directories, [https://www.atis.org/01\\_committ\\_forums/NGIIF/contact-directories/](https://www.atis.org/01_committ_forums/NGIIF/contact-directories/) (last visited Mar. 22, 2018).

<sup>137</sup> We treat the contact information that NECA makes available in the same manner as the contact information that the covered provider makes available on its website in terms of the covered provider's duty to respond in a timely fashion. In other words, we require covered providers to respond to communications regarding rural call completion issues via the contact information that NECA makes available as soon as reasonably practicable, and within no more than a single business day under ordinary circumstances.

<sup>138</sup> See NCTA Comments at 4 (describing how a database would facilitate problem-solving by "enabl[ing] providers to begin troubleshooting call termination issues directly as soon as possible").

#### 4. Other Issues

40. *Rural Incumbent LEC Lists.* Windstream and NCTA note that there “is no reliable method for covered providers to identify calls to rural incumbent LECs, other than by using the list of rural operating company numbers (OCNs) currently generated by NECA.”<sup>139</sup> We therefore direct NECA to continue updating its rural and non-rural OCN lists on a yearly basis;<sup>140</sup> this list will also facilitate continued compliance with the recording and retention rules. We continue to include non-rural OCNs both to facilitate comparisons of rural and non-rural call completion by covered providers and for use in continuing to comply with the recording and retention rules. As noted above, we also direct NECA to prepare a list of rural competitive LEC OCNs on a yearly basis.

41. *Performance Targets.* We decline to set specific performance targets or benchmarks for call answer rates, call completion rates, or any other performance metric. We agree with commenters who assert that “the Commission should refrain from mandating specific performance metrics for covered carriers or for their intermediate carriers.”<sup>141</sup> In connection with this, we observe that what constitutes poor rural call completion performance varies according to context. For example, carriers with a high autodialer or robocall volume may experience low answer or completion rates,<sup>142</sup> possibly leading to the conclusion that a low number answer rate percentage is an appropriate benchmark (and thus not poor performance) for such covered providers. In other contexts, that same percentage would be considered poor performance for covered providers originating only residential traffic. Similarly, the RCC Data Report identified a number of challenges in establishing metrics as a result of inaccurate signaling and misalignment in the mapping of ISUP cause codes to SIP response messages.<sup>143</sup> We therefore opt to give individual covered providers flexibility to establish their own methodologies that are appropriate to their networks and systems in monitoring call performance.

42. *Good Faith.* We reject arguments that we should establish a “good faith” threshold for compliance whereby we would not impose liability on covered providers making “a good faith effort to comply with the rules.”<sup>144</sup> The approach we adopt captures the desire for flexibility underlying some of

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<sup>139</sup> *Id.* at 6-7; *see also* Windstream Reply at 6.

<sup>140</sup> *See, e.g.*, NECA, Incumbent LEC OCN List (Nov. 10, 2017), *available at* <https://www.neca.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=11187&libID=11207>; *see also* 47 CFR § 64.2101.

<sup>141</sup> Sprint Comments at 7; *see also, e.g.* Comcast Comments at 7-8; ITTA Comments at 5-6; USTelecom Comments at 5-6 (“USTelecom believes that the performance metrics can be left to the discretion of carriers. Indeed, many carriers report that they are already undertaking this on their own. But the Commission should not specify or mandate them.”); Verizon Comments at 6 (“Some covered providers nevertheless may choose to implement metrics, but the Commission should not mandate them.”).

<sup>142</sup> *See* Sprint Comments at 9. Throughout this proceeding, both the Commission and industry have noted that it is uncertain whether covered providers can segregate autodialer and other telemarketing traffic from other types of traffic. *See RCC Order*, 28 FCC Rcd at 16179-80, para. 54; Sprint Comments at 9 (asserting that a provider “cannot unilaterally terminate autodialing campaigns [to improve performance metrics] and thus there is no basis for holding [providers] responsible for low call completion rates under such circumstances”); CenturyLink May 15, 2013 Comments at 15; XO June 12, 2013 Reply at 12.

<sup>143</sup> *See* RCC Data Report, 32 FCC Rcd at 4990, 4991, paras. 27-28. For additional information on Integrated Services Digital Network (ISDN) User Part (ISUP) and Session Initiation Protocol (SIP), *see, e.g., 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, <https://tools.ietf.org/pdf/rfc3398> (last visited Mar. 22, 2018).

<sup>144</sup> Windstream Reply at 5; *see also* AT&T Comments at 9; Comcast Comments at 8; USTelecom Comments at 5.

these requests,<sup>145</sup> and gives covered providers discretion to monitor as they see fit in a manner best suited to their individual networks and business arrangements. We do not impose strict liability on covered providers for a call completion failure; rather, we may impose a penalty where a covered provider fails to take actions to prevent reasonably foreseeable problems or, if it knows or should know that a problem has arisen, where it fails to investigate or take appropriate remedial action. Further, our monitoring rule focuses on persistent problems, and we will not impose liability under the monitoring rule for an isolated call failure. That said, a “good faith” threshold on top of the flexible approach we adopt would add a layer of unhelpful uncertainty as to what constitutes compliance. We are committed to ensuring call completion to all Americans, and we find a “good faith” threshold unduly lenient. We also agree with NASUCA that “[i]njecting subjective questions of motivation into enforcement actions will compromise their effectiveness and compromise the reliability of the network.”<sup>146</sup>

43. *Exempt Class of Service.* CenturyLink suggests we allow covered providers to offer a second class of service that would be “exempt from any new call completion rules.”<sup>147</sup> We decline to implement this approach. CenturyLink posits that call completion is “less important” to customers placing marketing calls—as opposed to those originating from residential customers—and therefore these calls should be exempt from any rural call completion monitoring requirements.<sup>148</sup> This second class would presumably include autodialer traffic.

44. We reject allowing an exempt class of service for several reasons. First, we believe all Americans deserve all lawful calls to be completed, regardless of their purpose.<sup>149</sup> In particular, calling parties should not be able to decide unilaterally which calls rural Americans deserve to receive reliably. We also prefer an approach that is potentially over-inclusive in ensuring call completion compared to a system that is potentially under-inclusive. Next, the present call signaling system does not distinguish between residential calls and any other call made to a residential area.<sup>150</sup> Because it therefore is not possible to evaluate a covered provider’s class categorization decision, a covered provider could categorize traffic inaccurately to suggest superior call completion performance (and thus imply superior monitoring) without the possibility of detection. Finally, a two-class practice could lead to violations of section 201 of the Act insofar as it entails a carrier that knows or should know that calls are not being completed to certain areas engaging in acts or omissions that allow or effectively allow these conditions to persist.<sup>151</sup>

45. *Certification, Audit, or Disclosure Requirement.* We decline to impose a certification or audit requirement in conjunction with the monitoring rule.<sup>152</sup> The CPUC asserts that “[a] certification or audit requirement would make clear to covered providers and intermediate providers the importance that

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<sup>145</sup> See, e.g., USTelecom Comments at 5 (“USTelecom supports the Commission’s proposal not to impose liability on carriers that make a good faith effort to comply with the Commission’s rules to complete calls, and the Commission’s rules should allow carriers the flexibility to incorporate voluntary testing into those efforts if they choose.”).

<sup>146</sup> NASUCA Comments at 6. We agree with NASUCA that adopting a good faith limitation does not provide greater clarity to our rule.

<sup>147</sup> CenturyLink Comments at 3-4.

<sup>148</sup> See *id.*

<sup>149</sup> See *Advanced Methods to Target and Eliminate Unlawful Robocalls*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 9706, 9709, para. 9 (2017).

<sup>150</sup> See *supra* note 142.

<sup>151</sup> See *2012 Declaratory Ruling*, 27 FCC Rcd at 1355, para. 11.

<sup>152</sup> See *RCC 2nd FNPRM*, 32 FCC Rcd at 6055, para. 18 (seeking comment on a certification or audit requirement); see also NTCA Apr. 5, 2018 *Ex Parte* at 2-3 (suggesting that we require covered providers to file their documented monitoring procedures publicly with the Commission and certify compliance with such procedures annually).

the FCC attaches to rural call completion,” but, recognizing that “[s]uch a requirement could be burdensome and costly,” suggests a one-year reporting interval.<sup>153</sup> We expect all entities subject to our rules to comply at all times, and our actions today demonstrate the importance to us of ensuring that calls are completed to all Americans. Additionally, numerous covered providers attest that they are committed to ensuring that rural calls are completed,<sup>154</sup> and we expect them to live up to this commitment. We decline to impose what we agree would be a costly requirement absent a clear and sufficiently tangible (as opposed to rhetorical) benefit.<sup>155</sup>

46. We further decline to require covered providers to file their documented monitoring procedures publicly with the Commission, as NTCA suggests.<sup>156</sup> NTCA contends that because we expect covered providers to document their processes for prospective monitoring, a filing requirement “imposes no meaningful burden.”<sup>157</sup> But such documentation in many cases is likely to reveal important technical, personnel, and commercial details about the covered provider’s network and business operations—so public disclosure would impose meaningful burdens.<sup>158</sup> There is no countervailing benefit sufficient to warrant imposing this burden. We are able to obtain information on covered providers’ monitoring practices in an investigation, so we do not need to impose a public disclosure requirement to effectively carry out our responsibilities.<sup>159</sup> Given the variance among covered providers’ networks and operations and the flexibility our monitoring rule provides, we see little value to covered providers “know[ing] what individual carriers’ procedures are and hav[ing] benchmarks against which subsequent performance can be measured”<sup>160</sup>—each covered provider is able to adopt its own approach.

47. *Test Lines.* We decline to mandate that terminating rural carriers activate an automated

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<sup>153</sup> CPUC Comments at 5.

<sup>154</sup> See, e.g., AT&T Comments at 1 (“AT&T has a long history of strongly supporting the Commission’s efforts to ensure the reliable and efficient operation of the nation’s telephone network. . . . All customers, whether they live in rural areas or not, should expect their calls to go through.”); Comcast Comments at 1 (stating that “Comcast consistently has supported efforts to ensure that voice service providers successfully deliver long-distance calls to rural exchanges”); Verizon Comments at 2 (“We take seriously concerns about call delivery and completion, and we have dedicated substantial resources to identifying and addressing issues affecting call completion to rural ILECs . . .”).

<sup>155</sup> See ITTA Comments at 5-6 (stating that a compliance audit “raise[s] the prospect of significant burdens on covered providers”). We note that the Office of Management and Budget recently stated that “[b]efore the next three-year [Paperwork Reduction Act] renewal” of the Commission’s customer proprietary network information (CPNI) rules, the “FCC should reevaluate its current use of the information collections associated with” the CPNI recordkeeping and annual certification requirements “and consider revising or removing them if they no longer provide practical utility.” OMB Control No. 3060-0715, Approval Without Change (Jan. 31, 2018), [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=201709-3060-013](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201709-3060-013).

<sup>156</sup> NTCA Apr. 5, 2018 *Ex Parte* at 2-3.

<sup>157</sup> *Id.*

<sup>158</sup> To the extent that a covered provider would be able to successfully obtain confidential treatment for part or all of its disclosure, it would mitigate the harm of disclosure but also would undercut any purported benefits. See 47 CFR § 0.457 *et seq.*

<sup>159</sup> We therefore do not agree that a disclosure requirement would give covered providers “greater incentives to comply with procedures on file with the Commission.” NTCA Apr. 5, 2018 *Ex Parte* at 3. We reiterate that we expect covered providers—and all regulated entities—to comply with our rules, and we are able to take enforcement action where they do not. See *supra* para. 9 (describing rural call completion consent decrees and complaint processes).

<sup>160</sup> NTCA Apr. 5, 2018 *Ex Parte* at 3.



test line.<sup>161</sup> Recommended as an ATIS best practice to help resolve call completion issues,<sup>162</sup> test lines “can expedite trouble resolution, avoid Customer Propriety Network Information-related issues and exclude problems that may be specific to the called party’s access and customer premises equipment arrangements.”<sup>163</sup> However, the record is silent as to what added costs and logistical burdens this mandate would impose on rural carriers. Further, NTCA and WTA assert that test lines may generate false positives and have the ability to handle a limited number of test calls at any given time—sometimes only one.<sup>164</sup> Verizon also contends that “[i]n [its] experience, there is no correlation between test-line results and rural call completion performance.”<sup>165</sup> Because it is not clear whether the benefits of greater availability of test lines will outweigh any burden to rural LECs and subscribers, we decline to mandate activation of test lines at this time. However, we encourage, but do not require, covered providers to make use of test lines where available in monitoring intermediate provider performance, and we encourage rural carriers to make test lines available to covered providers.

48. *Trunk Augmentation.* We decline to adopt HD Tandem’s proposal to require carriers to augment trunks used for RCC paths when they reach a monthly utilization rate of 80%.<sup>166</sup> We agree with Verizon that mandating “when and how carriers must purchase trunking capacity . . . contravene[s] the Commission’s goal of ensuring covered providers have the flexibility they need.”<sup>167</sup> Although HD Tandem asserts that “[w]hen trunk utilization exceeds 80%, the risk of dropped calls and poor quality calls dramatically increases” and that “[m]any tariffs require augmentation of trunks when they reach a utilization of 80% or more,”<sup>168</sup> it does not substantiate these claims. We decline to impose a precise mandate absent more details justifying the threshold HD Tandem suggests. The record does not contain enough detail confirming the costs or benefits of such a requirement to allow us to weigh any added benefits against the burden upon network flexibility and potential monetary compliance cost.

49. At the same time, we agree that maintaining adequate capacity is an important part of monitoring rural call completion performance. The ATIS RCC Handbook recommends that “it is important for the original IXC to maintain sufficient termination facilities that it can complete its own traffic when an intermediate provider cannot complete the call” because “[g]iven the cost challenges” intermediate providers have “to maintain a lean network and the aggregation of loads from multiple IXCs they must handle, there is a greater chance that, on a moment-to-moment basis, [intermediate providers] will not have capacity to complete a call” and “[m]aintaining its own termination capacity gives an IXC flexibility to quickly stop using an intermediate provider should performance problems develop.”<sup>169</sup> Thus, while we do not mandate trunk augmentation at a specific utilization threshold, maintaining adequate capacity is an important part of being able to monitor the performance of intermediate providers and meet the rural call completion monitoring rule we adopt today.

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<sup>161</sup> Cf. Comcast Comments at 11-12 (“One particularly effective [proactive measure to address call completion problems] . . . would be for the Commission to require each rural incumbent LEC to . . . activate an automated line in each end office that originating and intermediate carriers can use to establish a test call process.”); NCTA Comments at 2, 4 (asserting that “the Commission should require all providers to set up test lines so that originating and intermediate providers can ascertain whether there are issues with particular call paths.”).

<sup>162</sup> See ATIS RCC Handbook at 41.

<sup>163</sup> ATIS Comments at 4.

<sup>164</sup> See NTCA/WTA Comments at 15-16.

<sup>165</sup> Verizon Reply at 7-8

<sup>166</sup> See HD Tandem Comments at 4.

<sup>167</sup> Verizon Reply at 8.

<sup>168</sup> HD Tandem Comments at 4.

<sup>169</sup> ATIS RCC Handbook at 35.



50. *Phase-In of the Monitoring Requirement.* We adopt NCTA’s recommendation<sup>170</sup> that we allow a transition period before implementing the monitoring rule.<sup>171</sup> We are persuaded that covered providers will need some time to evaluate and renegotiate contracts with intermediate providers in order to comply with the monitoring requirement.<sup>172</sup> We reject NCTA’s argument that such a transition period should last twelve months, however; the monitoring requirement addresses the ongoing call completion problems faced by rural Americans, and delay only postpones when rural Americans will see the fruit of this solution. A six-month transition period will suffice to address NCTA’s concerns while not unduly delaying the effective date of the monitoring rule. The monitoring rule therefore will go into effect six months from the date that this Order is released by the Commission, or 30 days after publication of a summary of this Order in the Federal Register, whichever is later.<sup>173</sup>

51. *Review of Rules Adopted in this Report and Order.* It is important for us to continue to periodically reexamine the effectiveness of our rural call completion rules.<sup>174</sup> We therefore direct the Bureau, in conjunction with the Enforcement Bureau and the Consumer and Governmental Affairs Bureau, to review the progress that has been made in addressing rural call completion issues, and the effectiveness of our rules, within two years of the effective date of the rules. We direct the Bureau to publish its findings in a report that will be made available for public comment. We expect this report to benefit the Commission in its ongoing work to address rural call completion issues.

52. We decline to adopt NTCA’s recommendation that “the rules adopted in this order sunset after three years and revert to the rules [previously] in effect, absent a finding based on evidence and analysis that the new framework as adopted addresses rural call completion problems.”<sup>175</sup> The rules we adopt today are tailored to provide a more efficient and effective means to address persistent rural call completion issues than our prior rules. And, as outlined in the *Further Notice* below, we propose and seek comment on further modifications to our rural call completion rules, including those we adopt today, as we work to implement the RCC Act. Imposing an arbitrary expiration date on these rules is therefore unnecessary and counterproductive, as it could undermine their overall effectiveness.

## 5. Definitions

53. We retain the Commission’s current definition of “covered provider,” adopted in the *RCC Order*.<sup>176</sup> We agree with the CPUC that this scope is “a reasonable trade-off between covering an

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<sup>170</sup> NCTA Apr. 10, 2018 *Ex Parte* at 2.

<sup>171</sup> 47 CFR § 64.2111.

<sup>172</sup> NCTA Apr. 10, 2018 *Ex Parte* at 2, App’x at 2.

<sup>173</sup> NCTA suggests that the monitoring requirement will be subject to approval by the Office of Management and Budget (OMB), and that its effective date should be tied to “notice that the rule[ has] been approved by [OMB].” NCTA Apr. 10, 2018 *Ex Parte*, App’x at 2. Because the monitoring requirement does not require approval under the Paperwork Reduction Act, we do not tie the effective date to OMB approval.

<sup>174</sup> See *RCC Order*, 28 FCC Rcd at 16198, paras. 104-05.

<sup>175</sup> NTCA Apr. 5, 2018 *Ex Parte*. NTCA does not provide any examples of the Commission making use of this kind of ‘sunset and reversion’ approach to rulemaking.

<sup>176</sup> See 47 CFR § 64.2101 (“The term “covered provider” means a provider of long-distance voice service that makes the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers’ affiliates. A covered provider may be a local exchange carrier as defined in § 64.4001(e), an interexchange carrier as defined in § 64.4001(d), a provider of commercial mobile radio service as defined in § 20.3 of this chapter, a provider of interconnected voice over Internet Protocol (VoIP) service as defined in 47 U.S.C. 153(25), or a provider of non-interconnected VoIP service as defined in 47 U.S.C. 153(36) to the extent such a provider offers the capability to place calls to the public switched telephone network.”); *RCC Order*, 28 FCC Rcd at 16164-67, paras. 20-23.

adequate number of calls without placing a burden on those smaller carriers that would be least able to bear it.”<sup>177</sup> No commenter to the *RCC 2nd FNPRM* opposes this definition.<sup>178</sup>

54. Because we require each covered provider to monitor calls to rural incumbent LECs and competitive LECs, the definition of “rural incumbent LECs” we proposed in the *RCC 2nd FNPRM* is no longer relevant.<sup>179</sup> We instead employ the term “rural telephone company,” as that term is defined in 47 CFR § 51.5. This term reaches the same scope of rural incumbent LECs captured by our proposed definition, and it also includes rural competitive LECs.<sup>180</sup>

55. While we retain the definition of “intermediate provider” in our rules at present,<sup>181</sup> the RCC Act definition of “intermediate provider” differs from the definition in our rules.<sup>182</sup> Accordingly, in the *Third Further Notice of Proposed Rulemaking*, we propose to adopt that revised definition.<sup>183</sup>

## 6. Legal Authority

56. The Commission has previously articulated its direct and ancillary authority to adopt rules addressing rural call completion issues, and we rely on that same authority here.<sup>184</sup> In addition to the authority previously articulated, section 217 of the Act provides additional authority to mandate that covered provider carriers monitor the overall intermediate provider call path and correct any identified intermediate provider performance problems.<sup>185</sup> Intermediate providers in the call path “act for” the covered provider; therefore, without holding covered providers responsible for the acts or omissions they initiate to and through intermediate providers, we cannot ensure that covered provider carriers are fulfilling their statutory duties.

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<sup>177</sup> CPUC Comments at 3. We note that, regardless of size, all carriers are subject to the statutory requirements of the Act, including sections 201, 202, and 217, 47 U.S.C. §§ 201, 202, 217, and that VoIP providers are prohibited from blocking calls to or from the PSTN. *USF/ICC Transformation Order*, 26 FCC Rcd at 18029, paras. 973-74.

<sup>178</sup> See, e.g., CenturyLink Comments at 6 (“CenturyLink sees no need to change the definition[] of the term[] ‘covered provider.’”).

<sup>179</sup> See *RCC 2nd FNPRM*, 32 FCC Rcd at 6063, Appx. A. We proposed defining a “rural incumbent LEC” as an incumbent LEC that is a rural telephone company, as those terms are defined in 47 CFR § 51.5. See *id.*

<sup>180</sup> We clarify that a determination that a competitive LEC meets the definition of a “rural telephone company” for purposes of our rural call completion rules has no bearing on whether a competitive LEC meets the definition of a “rural CLEC” for purposes of section 61.26 of the Commission’s rules. See 47 CFR § 61.26(a)(6); see also Letter from Matt Nodine, Assistant Vice President, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, at 5-6 (filed Apr. 10, 2018). We decline to exclude LECs engaged in access stimulation, as defined in 47 CFR § 61.3(bbb), from the definition of rural telephone company for purposes of our rural call completion rules. See *id.* at 2. AT&T does not adequately explain how the monitoring rule we adopt today “benefit[s] access stimulation LECs” or how including all rural telephone companies within the scope of the rule “does not service consumers’ best interests.” *Id.* AT&T’s filing (submitted just before the proceeding closed for filings) did not attempt to quantify or otherwise specify the benefits that would accrue to access stimulation LECs or the extent to which those purported benefits would outweigh the benefits of broadly defining “rural telephone company” for purposes of this proceeding. Based on this incomplete record, we do not have enough information to decide the issue raised by AT&T at this time.

<sup>181</sup> 47 CFR § 64.1600(f).

<sup>182</sup> RCC Act (New section 261(i)(3)).

<sup>183</sup> See *infra* Part IV.F.

<sup>184</sup> See *RCC Order*, 28 FCC Rcd at 16169-74, paras. 28-39.

<sup>185</sup> See 47 U.S.C. § 217 (“In construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person.”).

## B. Reporting Requirement

57. Today, we eliminate the data reporting requirements created by the *RCC Order*. Based on the record developed in this proceeding, we find that this approach is likely to offer a better and more efficient balance between the burdens our data collection efforts place on service providers and our need for information pertaining to rural call completion problems. Our removal of the reporting requirements will provide prompt relief to covered providers, obviating the need to spend time and resources compiling and filing reports that would otherwise be due on May 1, 2018. In addition, in the *Further Notice* following this *Order*, we seek comment on whether to phase out the remaining recording and retention rules in conjunction with our implementation of the RCC Act.

### 1. Removal of the Reporting Requirement

58. *Background.* The recording, retention, and reporting requirements were intended to improve the Commission's ability to monitor rural call completion, and to aid enforcement action when necessary.<sup>186</sup> Pursuant to these rules, covered providers must record and retain for a period of at least six months records of individual call attempts to rural OCNs, including an indication whether each call attempt was handed off to an intermediate provider and, if so, which intermediate provider.<sup>187</sup> The provider must then compile and submit to the Commission in a certified report once per calendar quarter the following information, for each rural OCN, and for non-rural OCNs in the aggregate, separated by interstate and intrastate call attempts: (1) the total number of call attempts; (2) the total number of answered calls; and (3) the number of call attempts that were not answered, reported separately for call attempts signaled as “busy,” “ring no answer,” or “unassigned number.”<sup>188</sup>

59. Upon conducting its review of the rules, however, the Bureau found that data quality issues have limited its ability to use the collected data.<sup>189</sup> These issues include, among other things, differences in the ways that covered providers categorize their call attempts, and the inclusion of autodialer traffic, intermediate provider traffic, and wholesale traffic by some covered providers in the reporting.<sup>190</sup> In particular, the Bureau found that these variations in the format and substance of the provided data have prevented the Commission from using the data to draw firm conclusions about the source of rural call completion problems.<sup>191</sup>

60. Furthermore, the Bureau also found that reforming the existing rules to allow for more standardized data collection is likely to be prohibitively burdensome on providers, while providing uncertain utility to the Commission.<sup>192</sup> In particular, the Bureau found that “[t]he necessary modifications

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<sup>186</sup> See *RCC 2nd FNPRM*, 32 FCC Rcd at 6049, para. 4.

<sup>187</sup> 47 CFR § 64.2103.

<sup>188</sup> *RCC Order*, 28 FCC Rcd at 16182-84, paras. 65-67; 47 CFR § 64.2105; RCC Data Report, 32 FCC Rcd at 4982, para. 5. The Commission receives reports from approximately 55 covered providers each quarter. *RCC 2nd FNPRM*, 32 FCC Rcd at 6049-50, para. 4. Covered providers began recording the required data on April 1, 2015, and began submitting the information to the Commission via Form 480 reports on August 1, 2015. *Id.*; see also 47 CFR § 1.4 (stating that, where a filing date falls on a holiday, including Saturday and Sunday, that filing is due to the Commission on the next business day).

<sup>189</sup> RCC Data Report, 32 FCC Rcd at 4995, para. 38.

<sup>190</sup> See *id.* at 4996, para. 39.

<sup>191</sup> *Id.* at 4995-96, para. 38.

<sup>192</sup> *Id.* at 4996, para. 39 (“[E]ven if the Commission were to modify the reporting, recording, and retention rules, it is not clear that the benefits of such modifications would outweigh the costs.”). As the Bureau noted last year, the Commission declined to require the segregation of autodialer traffic when it created the data reporting requirements because covered providers may lack the ability to reliably separate this type of call data. *Id.* at 4992, para. 30. Unfortunately, the Wireline Competition Bureau has been “unable to draw firm conclusions” about the impact of including autodialer traffic “because the data also suggests that there may be significant differences in the way that

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[to the data collection]—including requiring all covered providers to categorize their call attempts using a consistent methodology and excluding autodialer traffic, intermediary traffic, and wholesale traffic from their reporting—would likely impose additional burdens on covered providers, and those burdens may be substantial.”<sup>193</sup> Subsequently, in the *RCC 2nd FNPRM*, the Commission sought comment on a variety of proposals to modify or eliminate the recording, retention, and reporting rules.<sup>194</sup>

61. *Discussion.* We eliminate the reporting requirement for covered providers. We conclude that the existing reporting rules are burdensome on covered providers, while the resulting Form 480 reports are of limited utility to us in discovering the source of rural call completion problems. We agree with CTIA that the rules “impose[] significant costs on covered providers,” and that compliance costs can “divert ‘funds that covered providers could otherwise use to deploy broadband service, improve network quality, or offer richer service plans.’”<sup>195</sup> We agree with the Bureau’s negative evaluation of the reporting requirement<sup>196</sup> and, based on the shortcomings it identified, reject the view that we should retain the reporting requirements as-is.<sup>197</sup>

62. We find that the burdens associated with supplementing or replacing the existing reporting requirements are likely to outweigh any benefits to the data collection. We therefore decline to amend our reporting rule. We agree with the Bureau’s conclusion in the *RCC Data Report* and commenters who suggest that addressing the ongoing data quality issues associated with Form 480 by supplementing or replacing the data collection rules with new requirements is likely to be prohibitively burdensome on covered providers, while potentially providing little value over the current regime.<sup>198</sup> The record supports the conclusion that standardization of the data collection is likely to be prohibitively costly while yielding an uncertain benefit.<sup>199</sup> As Verizon explains, the “significant resources providers expended to develop and build data systems to comply with the *2013 RCC Order* are now sunk costs” and we “should not force providers to incur a second round of burdens and costs to comply with modified or new recording, retention, and reporting obligations that likely would be as ineffective as their predecessors.”<sup>200</sup> For these reasons, we also decline to supplement or replace our existing recording and retention rules with any new data collection requirements.

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one or more of these five covered providers categorize their call attempts relative to covered providers overall.” *Id.* at 4993, para. 32. Similar problems exist with the inclusion of intermediate provider and wholesale traffic in the data collection. *Id.* at 4994-95, paras. 33-35; *see also* USTelecom Apr. 10, 2018 *Ex Parte* at 2 (filed Apr. 10, 2018) (noting that the reporting requirement “has not been providing the Commission with actionable intelligence about rural call issues, so the costs associated with such reporting are an unnecessary paperwork burden for covered carriers”).

<sup>193</sup> *RCC Data Report*, 32 FCC Rcd at 4996, para. 39.

<sup>194</sup> *RCC 2nd FNPRM*, 32 FCC Rcd at 6057-58, paras. 25-28.

<sup>195</sup> CTIA Comments at 4; *see also* CenturyLink Reply at 1; ITTA Comments at 3; NCTA Comments at 3; Sprint Comments at 1; USTelecom Comments at 5-7; Verizon Comments at 4; Voice on Net Coalition at 1 (stating that one of its members “estimates that it costs approximately \$32,000 per year (including computer expenses) and takes about 32-40 hours per year to gather the information and compile the quarterly report”); Windstream Reply at 3.

<sup>196</sup> *RCC Data Report*, 32 FCC Rcd at 4995-96, para. 38-40.

<sup>197</sup> *See* Letter from Jill Canfield, Vice President, Legal & Industry, Assistant General Counsel, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39 at 2 (Oct. 19, 2018); MTA Reply at 6-7; NASUCA Comments at 2.

<sup>198</sup> *See* *RCC Data Report*, 32 FCC Rcd at 4996, paras. 39-40; AT&T Comments at 3; Comcast Comments at 3-6; CTIA Comments at 6; Verizon Comments at 4-5.

<sup>199</sup> *See* AT&T Comments at 3; Comcast Comments at 3-6; CTIA Comments at 6; Verizon Comments at 4-5; *see also* *RCC Data Report*, 32 FCC Rcd at 4996, para. 39.

<sup>200</sup> Verizon Comments at 4; *see also* CTIA Comments at 6; AT&T Comments at 3 (noting that “[p]roviders . . . expended significant resources to design systems to implement the existing reporting regime” and arguing that

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63. The monitoring rule we adopt will be more effective in promoting covered provider compliance and facilitating enforcement where needed than the reporting rules because the monitoring rule imposes a direct, substantive obligation and because the reporting rules have proven to be not as effective as originally hoped. Furthermore, as the Commission has found previously, rural call completion problems are likely to be addressed especially effectively by ongoing intercarrier compensation reform,<sup>201</sup> a conclusion that is supported by the record.<sup>202</sup> Removal of the reporting requirement will provide covered providers with prompt relief by obviating the need to spend time and resources compiling and filing reports that would otherwise be due to the Commission on May 1, 2018.<sup>203</sup>

64. *Recording and Retention.* We choose to proceed incrementally and do not at this time eliminate the recording and retention rules. As we implement the rules we adopt today and as we continue to pursue more effective solutions to rural call completion problems through further intercarrier compensation reform<sup>204</sup> and RCC Act implementation, we anticipate that the value of the recording and retention rules will diminish. We seek comment in today's *Third Further Notice of Proposed Rulemaking* on whether to eliminate those requirements upon implementation of the RCC Act.<sup>205</sup>

## 2. Safe Harbor

65. In the *RCC Order*, the Commission instituted a safe harbor provision reducing the recording, retention, and reporting requirements. Specifically, the safe harbor qualifications require that a covered provider have: (1) no more than one additional intermediate provider in call path before termination; (2) a non-disclosure agreement with intermediate providers allowing the covered provider to identify its intermediates to the Commission and to rural LECs affected by intermediate provider

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“[c]hanging the data recording, retention and reporting requirements now would require new systems work, adding to the already substantial costs incurred by providers to comply with these rules”).

<sup>201</sup> *RCC 2nd FNPRM*, 32 FCC Rcd at 6052, para. 10.

<sup>202</sup> See CenturyLink Reply at 2-3; Sprint Comments at 1-2.

<sup>203</sup> Because we eliminate the reporting requirement, we eliminate section 64.2109, which provided that “[p]roviders subject to the reporting requirements in § 64.2105 of this chapter may make requests for Commission nondisclosure of the data submitted under § 0.459 of this chapter by so indicating on the report at the time that the data are submitted” and that “[t]he Chief of the Wireline Competition Bureau will release information to states upon request, if the states are able to maintain the confidentiality of this information.” 47 CFR § 64.2109. We will continue to treat reports already submitted to the Commission in accordance with the prior rule, i.e., we will honor confidentiality requests to the same extent as previously and will release information previously provided to the Commission to states that have requested access and are able to maintain the confidentiality of the information.

<sup>204</sup> These reforms include both the reductions in terminating switched access rates established by the *USF/ICC Transformation Order* and further intercarrier compensation reform that we anticipate undertaking. See *USF/ICC Transformation Order*, 26 FCC Rcd at 17935, para. 801 (establishing transition period that began July 1, 2012 and will end July 1, 2018 for incumbent LECs regulated under the price cap regime and July 1, 2020 for incumbent LECs regulated under the rate-of-return regime); see also *Parties Asked to Refresh the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, Public Notice, 32 FCC Rcd 6856 (WCB 2017); *Wireline Competition Bureau Announces the Comment Cycle For Refreshing the Record on Intercarrier Compensation Reform Related to the Network Edge, Tandem Switching and Transport, and Transit*, WC Docket No. 10-90, CC Docket No. 01-92, Public Notice, 32 FCC Rcd 7286 (WCB 2017).

<sup>205</sup> Although we retain the recording and retention requirements at present, we emphatically reject the view that eliminating some or all of the data collection “send[s] a signal” that rural call completion problems are “a low priority for the Commission.” MTA Reply at 6. The rules we adopt today, our efforts to implement the RCC Act, and our intercarrier compensation reform efforts show that ensuring calls are completed to all Americans is a top priority for us.

performance; and (3) a process in place to monitor intermediate provider performance.<sup>206</sup> Additionally, the RCC Act contains an exemption from its quality of service requirements for covered providers that meet our safe harbor requirements.<sup>207</sup>

66. Following adoption of this *Order*, covered providers qualifying for the safe harbor will continue to be subject to reduced recording and retention requirements. And, upon our adoption of rules implementing the RCC Act, covered providers who qualify for the safe harbor provisions of section 64.2107(a) will also be exempt from the quality of service requirements of the RCC Act, per new section 262(h) of the Act.<sup>208</sup> Retaining these safe harbor provisions will maintain the incentive for covered providers' to engage in call routing to rural areas that minimizes the use of multiple intermediate providers, a practice that contributes to rural call completion issues.<sup>209</sup> We remind covered providers that safe harbor status can be revoked at any time by the Commission for covered providers that violate Commission rules, or are found to no longer be in compliance with the safe harbor provisions.<sup>210</sup>

67. We decline to institute the amendments to the safe harbor qualifications suggested by Verizon, including allowing the "*de minimis*" use of a third intermediate provider during network congestion or outages, and clarifying that the safe harbor applies only to rural LEC destined traffic.<sup>211</sup> Verizon suggests that we create a presumption that use of an additional intermediate provider for a small percentage (e.g., not more than 3%) of all calls is part of a "bona fide network overflow arrangement" and would not invalidate a covered provider's safe-harbor status.<sup>212</sup> Verizon's proposed threshold is based on internal review of its overflow traffic on a single day in December 2013, on which it observed that "only 0.1% of its traffic on that day went to its overflow provider for termination."<sup>213</sup> However, Verizon does not explain how the findings of its single-day study support a 3% *de minimis* threshold for overflow routing applicable to all covered providers, and it acknowledges that other providers "may have different arrangements for overflow."<sup>214</sup> We therefore reject this proposal. Furthermore, codifying these changes to our rules would require the Commission to either set a threshold for congestion, or allow providers to set it themselves, which could undermine the purpose of the safe harbor regime we have established. Allowing covered providers to set their own thresholds could result in a wide range of varying standards that would effectively render the safe harbor meaningless. Alternatively, the Commission setting a congestion threshold would raise the same problems as setting performance thresholds with respect to the monitoring requirement we adopt.

#### IV. THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

68. In this *Further Notice*, we propose and seek comment on rules to implement the recently enacted RCC Act, which directs us to establish registration requirements and service quality standards for

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<sup>206</sup> See *RCC Order*, 28 FCC Rcd at 16191-92, para. 86.

<sup>207</sup> See 47 U.S.C. § 262(h).

<sup>208</sup> See *infra* Part IV.E.

<sup>209</sup> See NASUCA Comments at 2; MTA Reply at 5; NTCA/WTA Comments at 7-8; CenturyLink Reply at 2-3.

<sup>210</sup> See *RCC Order*, 28 FCC Rcd at 16194, para. 94.

<sup>211</sup> See Letter from Frederick E. Moacdieh, Executive Director, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39 at 1 (Apr. 10, 2018). We find Verizon's suggestion that we limit the safe-harbor certification to traffic destined to rural LECs contrary to the objective of the safe harbor, which is intended to discourage the use of multiple different intermediate providers.

<sup>212</sup> *Id.* at 1-2.

<sup>213</sup> Verizon and Verizon Wireless Jan. 16, 2014 Comments at 4.

<sup>214</sup> *Id.*

intermediate providers.<sup>215</sup> By giving us clear authority to shine a light on intermediate providers and hold them accountable for their performance, the RCC Act provides an important additional tool we can use in our work to promote call completion to all Americans. We anticipate that the rules we will adopt to implement the RCC Act's direction to regulate intermediate providers will complement our covered provider monitoring rule by ensuring that the participants in the call path share in the responsibility to ensure that calls to rural areas are completed. We also seek comment on sunseting the recording and retention rules established in the *RCC Order* upon implementation of the RCC Act.

**A. Certain Intermediate Providers Must Register with the Commission**

69. We propose and seek comment on rules to implement the registry provisions of the RCC Act. New section 262(c) of the Act mandates that, when promulgating registry rules, the Commission "(A) ensure the integrity of the transmission of covered voice communications to all customers in the United States; and (B) prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications."<sup>216</sup> The RCC Act also requires the Commission to make the intermediate provider registry publicly available on the Commission's website.<sup>217</sup> The statute does not otherwise specify requirements for the registry or the registration rules to be imposed on intermediate providers.

70. We propose to implement new section 262(a)(1) by requiring that any intermediate provider register with the Commission if that provider offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and charges any rate to any other entity (including an affiliated entity) for the transmission.

71. We propose that this registration be filed via a portal on the Commission's website, be made publicly available on that website, and include the following information: (1) the intermediate provider's business name(s) and primary address; (2) the name(s), telephone number(s), email address(es), and business address(es) of the intermediate provider's regulatory contact and/or designated agent for service of process; (3) all business names that the intermediate provider has used in the past; (4) the state(s) in which the intermediate provider provides service; and (5) the name, title, business address, telephone number, and email address of at least one person as well as the department within the company responsible for addressing rural call completion issues. We seek comment on this proposal and on any other types of information that intermediate providers should be required to include in their registrations.

72. The first four categories of information listed above are similar to those required under the Commission's existing registration requirement for telecommunications carriers and interconnected VoIP providers,<sup>218</sup> and we believe that they are appropriate for inclusion here. We also propose that intermediate provider registrations specifically include a point-of-contact for addressing rural call completion issues in light of record evidence that access to such information would help facilitate communication and cooperation among service providers to efficiently resolve rural call completion issues as expeditiously as possible.<sup>219</sup> We believe collection and publication of the foregoing information will not constitute a significant burden for affected providers, and will facilitate compliance by creating a publicly-available database of registered intermediate providers, along with the relevant contact information for each provider. We seek comment on this view. Consistent with our existing registration

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<sup>215</sup> RCC Act.

<sup>216</sup> *Id.* (New section 262(c)(2)).

<sup>217</sup> *Id.* (New section 262(d)).

<sup>218</sup> See 47 CFR § 64.1195 (registration requirement for telecommunications carriers); *id.* § 1.47(h) (registration requirement for interconnected VoIP providers); see also FCC Form 499-A, Blocks 1 and 2.

<sup>219</sup> See NTCA/WTA Comments at 16; Sprint Reply at 2-3; see also *supra* Part III.A.3.

requirements, we also propose to require intermediate providers to update their registration information within one week of any change.<sup>220</sup> We seek comment on this proposal and any alternatives thereto. We also seek comment on the benefits and burdens (including specific costs) of the proposed registration requirements, especially regarding small intermediate providers, and whether any accommodations for small providers are necessary.

73. Finally, we propose to adopt a 30-day registration deadline<sup>221</sup> for intermediate providers. We note that our filing instructions for Form 499-A indicate that new filers, including telecommunications carriers and interconnected VoIP providers, are to register with the Commission “[u]pon beginning to provide service, but no later than 30 days after beginning to provide service.”<sup>222</sup> Consistent with this requirement, we seek comment on whether a 30-day registration period would be appropriate for intermediate providers subject to our registration rules. We seek comment on this proposal, and on any alternative timeframes for requiring intermediate providers to register with the Commission.

74. We believe that our proposals, including making the registrations publicly available on the Commission’s website, are consistent with Congress’ intent to “increase the reliability of intermediate providers by bringing transparency” to the intermediate provider market.<sup>223</sup> We also believe that the proposals, including the requirement to provide point-of-contact information for rural call completion complaints and to make such information publicly available, are consistent with Congress’ mandate that our implementing rules ensure the integrity of the transmission of covered voice communications to all customers in the country and prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications.<sup>224</sup> At the same time, we believe that requiring the submission of this information would be minimally burdensome on intermediate providers. We seek comment on this preliminary analysis.

75. We also seek comment on any alternative proposals for structuring and managing the intermediate provider registry. In addition, we specifically seek comment on the benefits and burdens to smaller providers of our proposals and any potential alternatives.

76. *Intermediate Providers That Must Register.* New section 262(a) of the Act imposes registration and service quality requirements only on any intermediate provider “that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission.”<sup>225</sup> We therefore propose to apply the registration and service quality requirements we adopt to any intermediate provider so long as it fits within the criteria established by section 262(a). We seek comment on this proposal, on any potential alternatives, and on any other guidance we should provide in implementing section 262(a).

77. We seek comment on the difference between the universe of intermediate providers as defined in section 262(i)(3) and the universe of intermediate providers encompassed by section 262(a).

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<sup>220</sup> 47 CFR §§ 1.47(h), 64.1195(g).

<sup>221</sup> The registration period would commence upon approval by the Office of Management and Budget of the final rules establishing the registry.

<sup>222</sup> FCC, *2017 Instructions to the Telecommunications Reporting Worksheet, FCC Form 499-A*, [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-347163A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-347163A1.pdf).

<sup>223</sup> Senate Commerce Committee Report at 2.

<sup>224</sup> RCC Act (New section 262(c)(2)). In making this proposal, we clarify that our proposed registration requirements are not intended to alter our current processes for handling rural call completion complaints submitted by rural carriers or consumers. *See RCC 2nd FNPRM*, 32 FCC Rcd 6051, para. 8 (describing complaint processes).

<sup>225</sup> *Id.* (New section 262(a)).



Section 262(i)(3) offers a general definition of intermediate providers.<sup>226</sup> Section 262(a) appears to limit its application to intermediate providers, as defined in 262(i)(3), that meet additional limiting factors. One of these factors is that section 262(a) applies only to intermediate providers that charge a rate to other entities, including their affiliates, for transmitting covered voice communications. Are there any other differences between the intermediate providers encompassed by sections 262(i)(3) and 262(a)? Does the phrase “that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another” narrow the scope of intermediate providers captured by section 262(a) compared to section 262(i)(3)? We seek comment on this issue and any others that commenters believe are relevant in interpreting and implementing section 262(a).

78. With respect to the scope of intermediate providers subject to the registration requirements in particular, we note that section 262(b) states that “[a] covered provider may not use an intermediate provider to transmit covered voice communications unless such intermediate provider is registered under subsection (a)(1).”<sup>227</sup> We believe that this provision is best understood to mean that intermediate providers “that offer[] or hold[] [themselves] out as offering the capability to transmit covered voice communications from one destination to another and that charge[] any rate to any other entity (including an affiliate) for the transmission” must register with the Commission under section 262(a)(1), and that *any* intermediate provider that seeks to be used by a covered provider must also register with the Commission. We seek comment on this view and on any alternative readings that give meaning to the text of both sections 262(b) and 262(a)(1).

#### **B. Covered Providers May Not Use Unregistered Intermediate Providers**

79. We seek comment on how to interpret and implement the prohibition on covered providers’ use of unregistered intermediate providers in section 262(b). In particular, we seek comment on the definition of “use” in section 262(b). We propose that the word “use” in this context be understood to mean that a covered provider may not rely on *any* unregistered intermediate providers in the path of a given call. In making this proposal, we note that the definition of “intermediate provider” contained in section 262(i) broadly refers to providers at all points in the call chain, excluding covered providers who originate or terminate a given call,<sup>228</sup> and that section 262(a) requires any of these entities that offer to transmit covered voice communications for a rate to register with the Commission and meet our quality of service standards.<sup>229</sup> We seek comment on this proposal. Alternatively, should “use” be interpreted to mean that the covered provider must ensure only that the *first* intermediate provider in the call path is registered? Are there other possible interpretations of section 262(b)? For each potential interpretation, we seek comment on the costs and benefits (including to smaller providers), implementation issues, and the extent to which the interpretation reflects Congress’ intent.

80. We note that the relevant Senate Commerce Committee Report states that it is “not the intent of the Committee that this definition be interpreted to cover entities that only incidentally transmit voice traffic, like Internet Service Providers alongside other packet data, without a specific business arrangement to carry, route, or transmit that voice traffic.”<sup>230</sup> Should we supplement our proposed definition of “intermediate provider” to reflect this intent, and if so, how? For example, should certain types of entities be exempt from the definition of “intermediate provider”?

81. We further propose that covered providers must be responsible for knowing the identity

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<sup>226</sup> See *id.* (New section 262(i)(3)).

<sup>227</sup> *Id.* (New section 262(b)).

<sup>228</sup> *Id.* (New section 262(i)(3)).

<sup>229</sup> *Id.* (New section 262(a)).

<sup>230</sup> Report of the Committee on Commerce, Science, and Transportation on S. 96, Improving Rural Call Quality and Reliability Act of 2017, S. Rep. No. 115-6, at 6 (2017) (Senate Commerce Committee Report).

of all intermediate providers in a call path, and we seek comment on this proposal.<sup>231</sup> We believe this proposed requirement appropriately builds on and flows from our proposed interpretation of “use” in the RCC Act. The ATIS RCC Handbook states that if “[service providers] are aware of which downstream [service providers] are involved in handling their traffic, they can perform due diligence and possibly better manage call completion issues.”<sup>232</sup> Moreover, given the section 217 liability we described above (and related monitoring rule obligation we impose on covered providers to be responsible for the entire intermediate provider chain), we believe that allowing covered providers to not know the identities of their intermediates amounts to allowing willful ignorance: i.e., it would allow covered providers to circumvent their duties by employing unknown or anonymous intermediate providers in a call path. We seek comment on this proposal and analysis. If we adopt our proposed definition of “use,” how could covered providers comply with the RCC Act and not possess this information? We also seek comment on HD Tandem’s assertion that “[t]he possibility of unlimited and unknown intermediate carriers in the call path makes it nearly impossible, as a practical matter, to enforce the Commission’s RCC rules.”<sup>233</sup>

82. We further propose to require covered providers to maintain, and furnish upon request to the Commission or state authorities as appropriate, the identities of any or all intermediate providers in their respective call paths.<sup>234</sup> We seek comment on this proposal and on any alternative approaches, particularly as they relate to the RCC Act. We believe that making this information available upon request to the Commission and state authorities would facilitate our and state authorities’ understanding of rural call completion issues and how to combat them.<sup>235</sup> We further believe that this approach will help maximize the value of the registry for promoting rural call completion, and ensure compliance with section 262(b). We seek comment on this analysis.

83. We also seek comment generally on how best to enforce the requirements of section 262(b). For example, should we require covered providers to use the intermediate provider registry that we establish to confirm the registration of a potential intermediate provider before purchasing service from that provider? Further, we seek comment on whether we should adopt any exceptions to the prohibition on using unregistered intermediate providers and whether any such exceptions would be consistent with the RCC Act. What should the consequences be if a covered provider uses an unregistered intermediate provider?<sup>236</sup> If an intermediate provider loses its registration, how long should a covered provider have to remove that intermediate provider from its route table? What if that newly deregistered intermediate provider is the only provider to the target rural carrier? As part of this inquiry, we seek comment on the best approach to adopting any exceptions, including as to whether we should adopt express exceptions to our rules, or delineate circumstances under which affected entities could seek a waiver from the Commission.

84. Once we have adopted rules to implement the RCC Act registration requirement, how long should covered providers have to ensure that they comply with the requirement to use only registered

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<sup>231</sup> See HD Tandem Comments at 2.

<sup>232</sup> ATIS RCC Handbook at 34.

<sup>233</sup> HD Tandem Comments at 2.

<sup>234</sup> See HD Tandem at 2 (asking the Commission to require recordkeeping of intermediate provider information to ensure compliance); NTCA/WTA Comments at 12-14 (stating importance of knowing intermediate provider identity); see also NTCA/WTA Comments at 13 (suggesting that the Commission require that “any nondisclosure agreement with any intermediate provider must permit the covered provider to reveal the identity of the intermediate provider and any additional intermediate provider to the Commission and to the rural LEC(s) whose incoming long-distance calls are affected by the intermediate provider’s performance”).

<sup>235</sup> See HD Tandem Comments at 2.

<sup>236</sup> See *infra* Part IV.D (seeking comment on how to enforce the registration and service quality requirements that we adopt for intermediate providers).

intermediate providers? As discussed above, we propose to adopt a 30-day registration deadline for intermediate providers.<sup>237</sup> Should covered providers have an additional 30 days—after the 30-day registration deadline for intermediate providers—in which to ensure that they comply with the requirement to use only registered intermediate providers? Is that an adequate period of time for covered providers to make any contractual and/or traffic routing adjustments needed to comply with the RCC Act and the Commission’s implementing regulations? If not, what would be an appropriate period of time?

### C. Service Quality Standards for Intermediate Providers

85. The RCC Act also requires intermediate providers that offer, or hold themselves out as offering, the capability to transmit covered voice communications from one destination to another and that charge any rate to any other entity (including an affiliated entity) to comply with “service quality standards” to be established by the Commission.<sup>238</sup> Under new section 262(d) of the Act, in promulgating such standards, the Commission must “ensure the integrity of the transmission of covered voice communications to all customers in the United States” and “prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications.”<sup>239</sup> While the RCC Act does not define the term “service quality standards,” the Senate Commerce Committee Report states that such standards “could include the adoption of specific call completion metrics or the more general adoption of duties to complete calls analogous to those that already apply to covered providers under prior Commission rules and orders.”<sup>240</sup>

86. We seek comment generally on possible frameworks to implement the service quality standards provisions of the RCC Act. We seek to establish service quality standards for intermediate providers that will ensure rural call completion but that are also minimally burdensome, and we seek comment on how best to do so. We believe that proposals that rely on or are consistent with industry best practices to develop service quality standards will be less burdensome on intermediate providers than other potential approaches, and we seek comment on this view. For each of the proposals below and each potential alternative proposed by commenters, we seek comment on its effectiveness in ensuring call completion to rural areas (including its effectiveness relative to other proposals), its costs and benefits, and its impact on smaller intermediate providers.

#### 1. Proposed Service Quality Standards

87. *Industry Best Practices.* First, we propose to require intermediate providers subject to section 262(a) to take reasonable steps to abide by certain industry best practices for rural call completion. Specifically, we propose to require intermediate providers to take reasonable steps to: (1) prevent “call looping,” a practice in which the intermediate provider hands off a call for completion to a provider that has previously handed off the call;<sup>241</sup> (2) “crank back” or release a call back to the originating carrier, rather than simply dropping the call, upon failure to find a route;<sup>242</sup> and (3) not process calls so as to “terminate and re-originate” them<sup>243</sup> (e.g., fraudulently using “SIM boxes” or unlimited VoIP plans to re-originate large amounts of traffic in an attempt to shift the cost of terminating these calls from the

<sup>237</sup> See *supra* para. 73.

<sup>238</sup> RCC Act (New section 262(a)(2)).

<sup>239</sup> *Id.* (New section 262(c)(2)).

<sup>240</sup> Senate Commerce Committee Report at 6; see also *supra* paras. 5-8 (describing prior Commission rules and orders).

<sup>241</sup> ATIS, Intercarrier Call Completion/Call Termination Handbook § 6.3 (2015), <https://www.atis.org/docstore/product.aspx?id=26780> (ATIS Call Completion Handbook).

<sup>242</sup> *Id.* § 6.4.

<sup>243</sup> *Id.* § 6.6.

originating provider to the wireless or wireline provider).<sup>244</sup> These best practices, developed by ATIS, are supported by both covered providers and rural carriers.<sup>245</sup> We seek comment on our proposal, and how these rules should be drafted, including the specific language and terminology that should be used.

88. We also recognize that another industry best practice for rural call completion is to prohibit intermediate providers from manipulating signaling information.<sup>246</sup> Section 64.1601(a)(2) of the Commission's rules already requires intermediate providers within an interstate or intrastate call path that originate and/or terminate on the PSTN to pass unaltered to subsequent providers in the call path signaling information identifying the telephone number, or billing number, if different, of the calling party that is received with a call.<sup>247</sup> In addition, section 64.2201(b) requires intermediate providers to 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.<sup>248</sup> Are any additional rules necessary to prevent intermediate providers from manipulating signaling information for calls destined for rural areas? If we adopt an annual certification requirement, should we require intermediate providers to certify compliance with these rules in their annual certifications?

89. Are these best practices sufficient? Should we require intermediate providers to take reasonable steps to follow any other industry best practices, either in addition to or in place of those discussed above? Should we require intermediate providers to temporarily or permanently remove an intermediate provider who fails to perform at an acceptable service level from the routing path, as we required for covered providers?<sup>249</sup> Although we declined to mandate this approach for covered providers, should we require intermediate providers to take reasonable steps to limit the number of intermediate providers after them in the call chain?<sup>250</sup> How can we ensure that our rules keep pace if ATIS rural call completion best practices or other industry-based standard is modified? What are the costs, benefits, and implications of these requirements on covered providers, intermediate providers, and consumers? Are there other implementation issues associated with these best practices that we should consider? We seek comment on the approach we propose generally, including on how we should define "reasonable steps." We also seek comment on alternatives to this proposal, such as omitting the language "take reasonable steps to" from the draft rule.

90. *Self-Monitoring of Rural Call Completion Performance.* Second, in addition to the proposed requirement to comply with industry best practices, we propose requiring intermediate providers to have processes in place to monitor their own rural call completion performance when transmitting covered voice communications. We seek comment on whether we should model this self-monitoring rule on the monitoring rule for covered providers. In what ways, if any, should the two requirements vary? Should the self-monitoring rule for intermediate providers be more prescriptive than the monitoring rule for covered providers we adopt, and if so why and how? How can we ensure that the combined

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<sup>244</sup> See, e.g., Letter from Maggie McCready, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, Attachment, at 23-26 (filed Apr. 26, 2017).

<sup>245</sup> See, e.g., Letter from Glenn Reynolds, Vice President, Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 4 (Oct. 24, 2013) (US Telecom Oct. 24, 2013 *Ex Parte*); Letter from Colin Sandy, Govt. Relations Counsel, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 2 (Oct. 22, 2013) (NECA Oct. 22, 2013 *Ex Parte*); Letter from Edyael Casaperalta, Coordinator, Rural Broadband Policy Group, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 12-353, Attachment, "TURN Rural Telecommunications Policy Briefing," at 2 (May 15, 2015).

<sup>246</sup> See ATIS Call Completion Handbook § 6.8.

<sup>247</sup> 47 CFR § 64.1601(a)(2).

<sup>248</sup> *Id.* § 64.2201(b).

<sup>249</sup> See *supra* paras. **Error! Reference source not found.**-28; ATIS RCC Handbook at 34.

<sup>250</sup> ATIS RCC Handbook at 34.

monitoring requirements work harmoniously to best promote rural call completion while avoiding wasteful duplicative effort? For instance, should we allow a safe harbor for covered providers who work with an intermediate provider that meets our intermediate provider monitoring requirements and reports back or certifies its compliance to the covered provider?

91. If commenters believe the intermediate provider self-monitoring requirement and covered provider monitoring rule should differ, we seek comment on how they should differ. Should we specify the form and frequency of the required monitoring, and if so, how? Should we clarify the scope of the required monitoring by intermediate providers, and if so how? For example, should we clarify whether the monitoring must be conducted on a rural OCN-by-OCN basis? Should we specify how intermediate providers must monitor and assess their own rural call completion performance or should we leave this to the discretion of intermediate providers?<sup>251</sup> We also seek comment on any other potential implementation issues associated with the proposed self-monitoring requirement. Additionally, we seek comment on the benefits and burdens of this proposal with regard to small intermediate providers.

92. *Compliance.* Further, we seek comment on how we can best ensure compliance with our proposed requirements. While we rejected requiring covered providers to file an annual certification of compliance with the monitoring rule,<sup>252</sup> should we nonetheless require intermediate providers to file annual certifications that they are taking reasonable steps to follow the specified best practices? If so, how should such a requirement be implemented?

## 2. Alternative Proposals

93. We seek comment on alternative proposals for service quality standards. If we were to pursue “the more general adoption of duties to complete calls analogous to those that already apply to covered providers under prior Commission rules and orders,”<sup>253</sup> with which basic practices should we require intermediate providers to comply? For instance, should we explicitly prohibit intermediate providers from blocking or restricting calls to rural areas? We seek comment on such a requirement, including whether any exceptions would need to be permitted.

94. Alternatively, should we require intermediate providers to meet or exceed one or more numeric rural call completion performance targets or thresholds while giving them flexibility in how to meet this requirement? If so, what metric(s) should we utilize and what target(s) or threshold(s) should we set? How would we address the data quality issues we have previously seen in our reports in creating and enforcing such a metric?

95. Finally, we seek comment on whether we should require intermediate providers to certify that they do not transmit covered voice communications to other intermediate providers that are not registered with the Commission<sup>254</sup> and on any implementation issues associated with such a requirement. Is such a requirement necessary given that new section 262(b) prohibits covered providers from using intermediate providers that are unregistered?<sup>255</sup>

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<sup>251</sup> See, e.g., RCC Data Report, 32 FCC Rcd at 4981, 4989-95, paras. 2, 23-37 (observing problems with data collected where different providers use different practices and approaches to data analysis); see also Trent Stohrer, et al, Georgetown U., Sec. & Software Eng’g Research Ctr., *Issues, Analysis, and Tools for Rural Call Completion Issues* (2017), <https://ecfsapi.fcc.gov/file/104180548507226/S2ERC%2013-39%20Filing.pdf> (analyzing RCC metrics).

<sup>252</sup> See *supra* para. 45.

<sup>253</sup> Senate Commerce Committee Report at 6.

<sup>254</sup> NTCA et al. Feb. 18, 2014 Reply at 4.

<sup>255</sup> RCC Act (New section 262(b)).

### 3. Impact of Covered Provider Requirements On Quality Standards

96. For each of the proposals above and any potential alternative, we also seek comment on its relationship to the requirements for covered providers we adopt in today's *Order*. In particular, how should the quality standards we adopt for intermediate providers be influenced by the monitoring rule we establish for on covered providers, if at all? Does the fact that we adopted a flexible, standard-based approach for covered providers suggest that we should do the same for intermediate providers? Or does it encourage us to adopt specific measures for intermediate provider quality standards, so that covered providers can refer to intermediate provider compliance when working to fulfill the monitoring rule? We seek comment on these and any other issues regarding the interplay between our proposed service quality standards and the covered provider requirements adopted in today's *Order*.

#### D. Enforcement of Intermediate Provider Requirements

97. We seek comment on how to enforce the registration and service quality requirements that we adopt for intermediate providers. Should an intermediate provider's failure to comply with the quality standards we adopt or to fully and accurately register potentially result in removal from the registry, thereby preventing covered providers from using that intermediate provider? We seek comment on this issue and any related implementation issues. For example, how long should removal from the registry last? And what process should we establish for permitting an intermediate provider that has been removed from the registry for noncompliance to be reinstated?

98. For the Commission to exercise its forfeiture authority for violations of the Act and the Commission's rules without first issuing a citation, the wrongdoer must hold (or be an applicant for) some form of authorization from the Commission, or be engaged in activity for which such an authorization is required.<sup>256</sup> Intermediate providers are not currently required to obtain a Commission authorization (although some intermediate providers may hold Commission authorizations as a result of other services that they provide). We propose to interpret the act of registration itself as a grant of Commission authorization to intermediate providers and allow us to exercise our forfeiture authority against registered providers without first issuing a citation. We seek comment on this proposal. Does this proposal allow us to take appropriate enforcement action against providers that violate the intermediate provider requirements that we adopt?<sup>257</sup> Are there drawbacks to this proposal, or practical implementation issues we should consider? Is there an alternate mechanism to gain enforcement authority over intermediate providers that we should adopt?

99. In addition, to the extent that any intermediate providers are not common carriers, we seek comment on appropriate penalties and enforcement processes for violations of the RCC Act.<sup>258</sup> Presently, common carriers may be assessed a forfeiture of up to \$196,387 per violation or each day of a continuing violation and up to a statutory maximum of \$1,963,870 for any single act or failure to act.<sup>259</sup> In contrast, non-common carrier entities that hold Commission authorizations, but are not specifically

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<sup>256</sup> See 47 U.S.C. § 503(b).

<sup>257</sup> See *id.* §§ 201(b), 208, 211(b), 216-218, 503(b)(5).

<sup>258</sup> See, e.g. 47 U.S.C. §§ 503(b)(2)(B), (b)(2)(D); 47 CFR §§ 1.80(b)(2), (b)(7).

<sup>259</sup> See 47 U.S.C. § 503(b)(2)(B); see also 47 CFR § 1.80(b)(2); *Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 18-12 (EB2018) (*Adjustment of Civil Monetary Penalties to Reflect Inflation*). These amounts reflect inflation adjustments to the forfeitures specified in Section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (2015 Inflation Adjustment Act) requires the Commission to amend its forfeiture penalty rules to reflect annual adjustments for inflation in order to improve their effectiveness and maintain their deterrent effect. Further, the 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, including when the violations associated with the penalties predate the increase.

designated in Section 503(b)(2)(A) through (C) of the Act, are subject to a forfeiture of up to \$19,639 per violation or each day of a continuing violation and up to a statutory maximum of \$147,290 for any single act or failure to act.<sup>260</sup> These penalties also apply to an entity that does not hold (and is not required to hold) a Commission license, permit, certificate, or other instrument of authorization, but, as explained above, is subject to forfeiture after a citation has first been issued.<sup>261</sup> Under our proposal, we could impose forfeitures on intermediate providers registered with us without first issuing a citation. In such cases, which penalty is the more appropriate maximum forfeiture for intermediate providers that are not otherwise considered common carriers? If commenters believe that such entities should be subject to the same potential penalties as common carriers, what legal authority do we have for that approach? Commenters advocating for a given approach should discuss in detail the legal analysis and/or any relevant precedent that they believe could justify such action. Are there other bases for imposing on any intermediate providers that are not common carriers equivalent enforcement provisions as those imposed on traditional common carriers in the rural call completion context?

100. Should intermediate providers be prohibited from registering with the Commission if they are “red-lighted” by the Commission for unpaid debts or other reasons? And how can we prevent individuals from circumventing registration prohibitions by forming and registering new intermediate provider entities? Are there other reasons for which intermediate providers should be deemed ineligible to register? We seek comment on these and any alternative approaches that commenters believe would put any intermediate providers that are not common carriers on an equal footing with intermediate providers that are common carriers.

#### **E. Exception to Service Quality Standards for Safe Harbor Covered Providers**

101. The RCC Act creates an exception to the intermediate provider service quality standards to be established by the Commission for those intermediate providers that are also safe harbor covered providers.<sup>262</sup> Specifically, new section 262(h) provides that the service quality standards “shall not apply to a covered provider that—(1) on or before the date that is 1 year after the date of enactment of this section, has certified as a safe harbor provider under section 64.2107(a) . . . or any successor regulation; and (2) continues to meet the requirements under such section 64.2107(a).”<sup>263</sup> Therefore, to implement new section 262(h), we propose to retain the three qualification requirements of our existing safe harbor rule. That is, a covered provider seeking to qualify for the safe harbor within the timeframe specified under the legislation would need to meet the existing qualification requirements in section 64.2107(a) of our rules.<sup>264</sup> We seek comment on this proposal.

102. We also seek comment on the interaction between the exemptions contained in the RCC Act and our removal of the RCC data reporting requirements. In this connection, we seek comment on how phasing out the remaining recording and retention requirements,<sup>265</sup> if we were to adopt that approach,

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<sup>260</sup> See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7).

<sup>261</sup> See 47 U.S.C. § 503(b)(2)(D); 47 CFR § 1.80(b)(7).

<sup>262</sup> See 47 CFR § 64.2107. In order to qualify for the Safe Harbor, covered providers satisfy three qualification requirements: (1) the covered provider must restrict by contract any intermediate provider to which a call is directed from permitting more than one additional intermediate provider in the call path before the call reaches the terminating provider or terminating tandem; (2) any nondisclosure agreement with an intermediate provider must permit the covered provider to reveal the identity of the intermediate provider and any additional intermediate provider to the Commission and to the rural incumbent LEC(s) whose incoming long-distance calls are affected by the intermediate provider’s performance; and (3) the covered provider must have a process in place to monitor the performance of its intermediate providers. *Id.* § 64.2107(a)(1)-(2).

<sup>263</sup> RCC Act (New section 262(h)).

<sup>264</sup> 47 CFR § 64.2107(a)(1)-(2).

<sup>265</sup> See *infra* Part IV.H.

could affect the safe harbor provisions of section 64.2107(a), and by extension, our implementation of section 262(h). If we were to eliminate the recording and retention requirements from which the safe harbor provides partial relief, will safe harbor covered providers have sufficient incentive to continue to use no more than two intermediate providers in the path of a given call? Stated differently, will relief from the intermediate provider service quality standards pursuant to section 262(h) provide adequate incentive for current safe harbor covered providers to continue utilizing no more than two intermediate providers in the call path in an effort to reduce rural call completion problems? Do commenters have alternative proposals for implementing section 262(h)? For our proposal and any alternative proposal, we seek comment on its costs and benefits (including for smaller providers), implementation issues, and its effect on reducing rural call completion problems.

#### F. RCC Act Definitions

103. We seek comment on any other issues we should take into account with respect to the RCC Act's definitions of the terms "intermediate provider," "covered voice communication," and "covered provider." In addition, we seek comment on whether there are any other terms that we should define explicitly for purposes of implementing the RCC Act and, if so, how we should define those terms.

104. *Intermediate Provider.* New section 262(i) of the Act defines an "intermediate provider" as any entity that "(A) enters into a business arrangement with a covered provider or other intermediate provider for the specific purpose of carrying, routing, or transmitting voice traffic that is generated from the placement of a call placed—(i) from an end user connection using a North American Numbering Plan resource; or (ii) to an end user connection using such a numbering resource; and (B) does not itself, either directly or in conjunction with an affiliate, serve as a covered provider in the context of originating or terminating a given call."<sup>266</sup> We propose to adopt the same definition of "intermediate provider" in our rules implementing the RCC Act. We seek comment on this proposal and on what, if any, additional guidance we should provide concerning this definition. We also seek comment on possible alternatives.

105. Our existing rural call completion rules define "intermediate provider" differently from the RCC Act. Specifically, under section 64.2101 of the Commission's rules, "intermediate provider" is given the same meaning as in section 64.1600(f), which defines it 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."<sup>267</sup> For our rural call completion rules governing covered providers, we propose to modify the existing definition of intermediate provider in section 64.2101 to make it consistent with the definition of intermediate provider in the RCC Act. We seek comment on the effects of this proposed modification. Do commenters believe that there is a substantive difference between the definition of "intermediate provider" in our existing rules and in the RCC Act? Should we supplement our proposed definition of "intermediate provider" to reflect this difference, and if so, how? For example, should certain types of entities be exempt from the definition of "intermediate provider"?

106. *Covered Voice Communication.* The RCC Act defines "covered voice communication" as "a voice communication (including any related signaling information) that is generated—(A) from the placement of a call from a connection using a North American Numbering Plan resource or a call placed to a connection using such a numbering resource; and (B) through any service provided by a covered provider."<sup>268</sup> We propose to adopt the same definition in our rules implementing the RCC Act. We seek comment on this proposal and on any additional guidance we should provide on this definition. We also seek comment on the meaning of the phrase "through any service provided by a covered provider." Is a voice communication "covered" if it does not originate with a covered provider but the call traverses or terminates on the network of covered provider? Would such voice communication include those carried

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<sup>266</sup> RCC Act (New section 262(i)(3)).

<sup>267</sup> 47 CFR §§ 64.2101, 64.1600(f).

<sup>268</sup> RCC Act (New section 262(i)(2)).



by non-interconnected VoIP providers or private networks in the call path? More generally, how should non-interconnected VoIP providers and private networks be regulated to ensure the completion of calls to rural areas, and what rules should apply in that regard?

107. *Covered Provider*. New section 262(i)(1) of the Act gives the term “covered provider” the same meaning as in the Commission’s existing rural call completion rules “or any successor thereto.”<sup>269</sup> For purposes of implementing the RCC Act, we propose to retain the definition of “covered provider” as in our existing rules. We seek comment on this proposal.

### **G. Legal Authority**

108. We believe that the RCC Act gives us ample legal authority to adopt the proposed registration requirements and service quality standards for intermediate providers and any potential alternative proposals. We seek comment on this view, and on additional or alternative sources of authority for the rules we propose and on which we seek comment above. To the extent that additional authority necessary, we seek comment on sections 201(b), 251(a), and 403 as additional sources of authority for our proposals.

### **H. Sunset of Recording and Retention Rules**

109. We seek comment on elimination of the recordkeeping and retention rules adopted in the *RCC Order* in conjunction with our implementation of the RCC Act. As we have observed, the rural call completion data collection has been characterized by challenges that limit its utility for some of its intended purposes.<sup>270</sup> Going forward, we anticipate that progress on intercarrier compensation reform, our newly adopted requirement that covered providers monitor their intermediate providers, and the implementation of the RCC Act should allow the Commission to more efficiently address rural call completion issues. We therefore seek comment on whether to sunset the remaining recordkeeping and retention rules upon effectiveness of rules we adopt to implement the RCC Act.

110. Alternatively, should we sunset the rules at a different point in time, such as three years from today’s *Order*, on the view that this will allow sufficient time for the Commission to undertake further intercarrier compensation reform, and for compliance with the rules we adopt today and those to implement the RCC Act to promote rural call completion? We seek comment on further alternatives, including whether we should instead retain the recording and retention rules without any sunset.<sup>271</sup>

### **I. Modification of Rules Adopted in the *Second Report and Order***

111. In today’s *Order*, we conclude that covered provider monitoring requirements we adopt are necessary complements to the intermediate provider requirements created by the RCC Act.<sup>272</sup> We seek comment on whether we should revisit our conclusions as we implement the RCC Act. Should we change the monitoring requirements that we adopt today in light of the service quality standards for intermediate providers under consideration in this *Third Further Notice of Proposed Rulemaking*? If so, how? Should we create a safe harbor for covered providers who work with intermediate providers that meet our quality standards? What would be the contours of such a safe harbor so that it would be meaningful, considering that the RCC Act directs *all* intermediate providers to meet the quality standards we adopt? Alternatively, should we remove covered provider requirements entirely once the RCC Act is

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<sup>269</sup> See *id.* (New section 262(i)(1)) (“The term ‘covered provider’ has the meaning given the term in section 64.2101 . . . or any successor thereto.”).

<sup>270</sup> RCC Data Report, 32 FCC Rcd at 4995, para. 38.

<sup>271</sup> See NTCA Apr. 5, 2018 *Ex Parte* (arguing that these records are “more important than ever” given our elimination of the reporting requirements and adoption of monitoring requirements for covered providers).

<sup>272</sup> See *supra* paras. 15-**Error! Reference source not found.**

fully implemented?<sup>273</sup> Would such changes jeopardize our ability to identify and penalize providers, including intermediate providers, that violate the Communications Act or our call blocking rules? We seek comment on these and any alternative approaches.

## V. PROCEDURAL MATTERS

112. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>274</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 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.

113. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules, as proposed, addressed in this *Second Report and Order*. The FRFA is set forth in Appendix D. The Commission will send a copy of this *Second Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

114. *Initial Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act (RFA),<sup>275</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this *Third Further Notice of Proposed Rulemaking*. The text of the IRFA is set forth in Appendix E. 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 comment on the *Third Further Notice of Proposed Rulemaking*. The Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Third Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>276</sup>

115. *Paperwork Reduction Act.* This *Second Report and Order* contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA, 44 U.S.C. § 3507. OMB, the general public, and other Federal agencies are invited to comment on the revised information collection requirements contained in this proceeding. In addition,

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<sup>273</sup> Cf. ITTA Comments at 5.

<sup>274</sup> 47 CFR §§ 1.1200 *et seq.*

<sup>275</sup> *See* 5 U.S.C. § 603.

<sup>276</sup> *See id.* § 603(a).

we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

116. In this present document, we require covered providers to provide and maintain contact information on their websites a telephone number and email address for the express purpose of receiving and responding promptly to any rural call completion issues. We have assessed the effects of this rule, and find that any burden on small businesses will be minimal because this is a low-cost measure to facilitate industry collaboration to address call completion issues.

117. In addition, this *Third Further Notice of Proposed Rulemaking* contains proposed new and modified 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, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.<sup>277</sup>

118. *Congressional Review Act.* The Commission will send a copy of this *Second Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

119. *Comment Filing Procedures.* 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://apps.fcc.gov/ecfs/>
- 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 9050 Junction Drive, Annapolis Junction, MD 20701.
- 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 email to

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<sup>277</sup> *See* 44 U.S.C. § 3506(c)(4).

[fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

120. *Contact Person.* For further information about this rulemaking proceeding, please contact Alex Espinoza, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C211, 445 12th Street, S.W., Washington, D.C. 20554, at (202) 418-0849 or [Alex.Espinoza@fcc.gov](mailto:Alex.Espinoza@fcc.gov).

## VI. ORDERING CLAUSES

121. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 403, this *Second Report and Order and Third Further Notice of Proposed Rulemaking* IS ADOPTED.

122. IT IS FURTHER ORDERED that Part 64 of the Commission's rules ARE AMENDED as set forth in Appendix B.

123. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR §§ 1.4(b)(1), 1.103(a), this *Second Report and Order* SHALL BE EFFECTIVE 30 days after publication of a summary in the Federal Register, except for the addition of section 64.2113 to the Commission's rules, which will become effective upon announcement in the Federal Register of Office of Management and Budget (OMB) approval and an effective date of the rules.

124. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *Second Report and Order* to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## RCC ACT — 47 U.S.C. § 267

**SEC. 262. ENSURING THE INTEGRITY OF VOICE COMMUNICATIONS.**

(a) **REGISTRATION AND COMPLIANCE BY INTERMEDIATE PROVIDERS.**—An intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission shall—

- (1) register with the Commission; and
- (2) comply with the service quality standards for such transmission to be established by the Commission under subsection (c)(1)(B).

(b) **REQUIRED USE OF REGISTERED INTERMEDIATE PROVIDERS.**—A covered provider may not use an intermediate provider to transmit covered voice communications unless such intermediate provider is registered under subsection (a)(1).

(c) **COMMISSION RULES.**—

(1) **IN GENERAL.**—

(A) **REGISTRY.**—Not later than 180 days after the date of enactment of this section, the Commission shall promulgate rules to establish a registry to record registrations under subsection (a)(1).

(B) **SERVICE QUALITY STANDARDS.**—Not later than 1 year after the date of enactment of this section, the Commission shall promulgate rules to establish service quality standards for the transmission of covered voice communications by intermediate providers.

(2) **REQUIREMENTS.**—In promulgating the rules required by paragraph (1), the Commission shall—

(A) ensure the integrity of the transmission of covered voice communications to all customers in the United States; and

(B) prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications.

(d) **PUBLIC AVAILABILITY OF REGISTRY.**—The Commission shall make the registry established under subsection (c)(1)(A) publicly available on the website of the Commission.

(e) **SCOPE OF APPLICATION.**—The requirements of this section shall apply regardless of the format by which any communication or service is provided, the protocol or format by which the transmission of such communication or service is achieved, or the regulatory classification of such communication or service.

(f) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to affect the regulatory classification of any communication or service.

(g) **EFFECT ON OTHER LAWS.**—Nothing in this section shall be construed to preempt or expand the authority of a State public utility commission or other relevant State agency to collect data, or investigate and enforce State law and regulations, regarding the completion of intrastate voice communications, regardless of the format by which any communication or service is provided, the protocol or format by which the transmission of such communication or service is achieved, or the regulatory classification of such communication or service.

(h) **EXCEPTION.**—The requirement under subsection (a)(2) to comply with the service quality standards established under subsection (c)(1)(B) shall not apply to a covered provider that—

(1) on or before the date that is 1 year after the date of enactment of this section, has certified as a Safe Harbor provider under section 64.2107(a) of title 47, Code of Federal Regulations, or any successor regulation; and

(2) continues to meet the requirements under such section 64.2107(a).

(i) DEFINITIONS.—In this section:

(1) COVERED PROVIDER.—The term ‘covered provider’ has the meaning given the term in section 64.2101 of title 47, Code of Federal Regulations, or any successor thereto.

(2) COVERED VOICE COMMUNICATION.—The term ‘covered voice communication’ means a voice communication (including any related signaling information) that is generated—

(A) from the placement of a call from a connection using a North American Numbering Plan resource or a call placed to a connection using such a numbering resource; and

(B) through any service provided by a covered provider.

(3) INTERMEDIATE PROVIDER.—The term ‘intermediate provider’ means any entity that—

(A) enters into a business arrangement with a covered provider or other intermediate provider for the specific purpose of carrying, routing, or transmitting voice traffic that is generated from the placement of a call placed—

(i) from an end user connection using a North American Numbering Plan resource; or

(ii) to an end user connection using such a numbering resource; and

(B) does not itself, either directly or in conjunction with an affiliate, serve as a covered provider in the context of originating or terminating a given call.

## APPENDIX B

## Final Rules

## PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. Revise the authority citation for part 64 to read as follows:

Authority: 47 U.S.C. §§ 154, 202, 225, 251(e), 254(k), 403(b)(2)(B), (c), 616, 620, Pub.L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. §§ 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112–96, unless otherwise noted.

2. Amend the heading of Subpart V of Part 64 by revising the heading to read as follows:

**Subpart V – Rural Call Completion**

3. Amend section 64.2101 by adding a definition of “Rural telephone company” to read as follows:

**§ 64.2101 Definitions.**

\* \* \* \* \*

*Rural telephone company.* The term “rural telephone company” shall have the same meaning as in § 51.5 of this chapter.

4. Remove and reserve section 64.2105.

5. Amend section 64.2107 by revising the section heading, revising the first sentence of paragraph (a)(1), removing paragraph (c), and redesignating paragraph (d) as paragraph (c), to read as follows:

**§ 64.2107 Reduced recording and retention requirements for qualifying providers under the Safe Harbor.**

(a)(1) A covered provider may reduce its recording and retention requirements under § 64.2103 of this subpart if it files one of the following certifications, signed by an officer or director of the covered provider regarding the accuracy and completeness of the information provided, in WC Docket No. 13-39.

\* \* \*

6. Remove and reserve section 64.2109.

7. Add section 64.2111 to subpart V to read as follows:

**§ 64.2111 Covered Provider Rural Call Completion Practices.**

For each intermediate provider with which it contracts, a covered provider shall:

(a) monitor the intermediate provider’s performance in the completion of call attempts to rural telephone companies from subscriber lines for which the covered provider makes the initial long-distance call path choice; and

(b) based on the results of such monitoring, take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing the intermediate provider from a particular route after sustained inadequate performance.

8. Add section 64.2113 to subpart V to read as follows:

**§ 64.2113 Covered Provider Point of Contact.**

Covered providers shall make publicly available contact information for the receipt and handling of rural call completion issues. Covered providers must designate a telephone number and email address for the express purpose of receiving and responding to any rural call completion issues. Covered providers shall include this information on their websites, and the required contact information must be easy to find and use. Covered providers shall keep this information current and update it to reflect any changes within ten

(10) business days. Covered providers shall ensure that any staff reachable through this contact information has the technical capability to promptly respond to and address rural call completion issues. Covered providers must respond to communications regarding rural call completion issues via the contact information required under this rule as soon as reasonably practicable and, under ordinary circumstances, within a single business day.



## APPENDIX C

## Proposed Rules

The Federal Communications Commission proposes to amend Part 64 of Title 47 of the Code of Federal Regulations as follows:

**PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. §§ 154, 202, 225, 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, Pub.L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. §§ 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub.L. 112–96, unless otherwise noted.

2. Amend section 64.2101 by adding a definition of “covered voice communication” and revising the definition of “intermediate provider” to read as follows:

**§ 64.2101 Definitions.**

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*Covered voice communication.* The term “covered voice communication” means a voice communication (including any related signaling information) that is generated—

- (1) from the placement of a call from a connection using a North American Numbering Plan resource or a call placed to a connection using such a numbering resource; and
- (2) through any service provided by a covered provider.

\*\*\*\*\*

*Intermediate provider.* The term “intermediate provider” means any entity that—

- (a) enters into a business arrangement with a covered provider or other intermediate provider for the specific purpose of carrying, routing, or transmitting voice traffic that is generated from the placement of a call placed—
  - (1) from an end user connection using a North American Numbering Plan resource; or
  - (2) to an end user connection using such a numbering resource; and
- (b) does not itself, either directly or in conjunction with an affiliate, serve as a covered provider in the context of originating or terminating a given call.

3. Amend section 64.2107 to read as follows:

**§ 64.2107 Safe Harbor from Intermediate Provider Service Quality Standards.**

(a)(1) A covered provider may qualify as a safe harbor provider under this subpart if it files one of the following certifications, signed under penalty of perjury by an officer or director of the covered provider regarding the accuracy and completeness of the information provided, in WC Docket No. 13–39:

I \_\_\_ (name), \_\_\_ (title), an officer of \_\_\_ (entity), certify that \_\_\_ (entity) uses no intermediate providers;” or

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 or terminating tandem. I certify that any nondisclosure agreement with an intermediate provider permits \_\_\_

(entity) to reveal the identity of the intermediate provider and any additional intermediate provider to the Commission and to the rural incumbent local exchange carrier(s) 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.

(2) The certification in paragraph (a)(1) must be submitted:

(A) for the first time on or before February 26, 2019; and

(B) annually thereafter.

(b) The requirements of section 64.2117 shall not apply to covered providers who qualify as safe harbor providers in accordance with this section.

4. Add section 64.2115 to subpart V to read as follows:

**§ 64.2115 Registration of Intermediate Providers.**

(a) *Requirement to use registered intermediate providers.* A covered provider shall not use an intermediate provider to transmit covered voice communications unless such intermediate provider is registered pursuant to this section.

(b) *Registration.* An intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission shall register with the Commission in accordance with this section. The intermediate provider shall provide the following information in its registration:

(1) The intermediate provider's business name(s) and primary address;

(2) The name(s), telephone number(s), email address(es), and business address(es) of the intermediate provider's regulatory contact and/or designated agent for service of process;

(3) All names that the intermediate provider has used in the past;

(4) The state(s) in which the intermediate provider provides service; and

(5) The name, title, business address, telephone number, and email address of at least one person as well as the department within the company responsible for addressing rural call completion issues.

(c) *Submission of registration.* An intermediate provider that is subject to the registration requirement in paragraph (b) of this section shall submit the information described therein through the intermediate provider registry on the Commission's website. The registration shall be made under penalty of perjury.

(d) *Changes in information.* An intermediate provider must update the information provided pursuant to paragraph (b) of this section within one week of any change.

(e) *Effect of registration.* An intermediate provider that submits registration pursuant to subsections (b) and (c) of this section, and receives confirmation that its registration is complete, is thereby granted an authorization to operate as an intermediate provider that covered providers may use under subsection (a).

5. Add section 64.2117 to subpart V to read as follows:

**§ 64.2117 Intermediate Provider Service Quality Standards.**

An intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission must comply with the following requirements when transmitting covered voice communications:

- (a) The intermediate provider must take reasonable steps to:
  - (1) prevent handing off a call for completion to a provider that has previously handed off the same call;
  - (2) release a call back to the originating interexchange carrier if the intermediate provider fails to find a route for completion of the call; and
  - (3) prevent processing of calls in a manner that terminates and re-originates the calls.
- (b) The intermediate provider must have processes in place to monitor its rural call completion performance.

## APPENDIX D

## Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Second Further Notice of Proposed Rulemaking (RCC 2nd FNRPM)* for the Rural Call Completion proceeding.<sup>2</sup> The Commission sought written public comment on the proposals in the *RCC 2nd FNRPM*, including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this *Order*, the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.<sup>3</sup>

**A. Need for, and Objectives of, the Rules**

2. In this *Order*, we revise our rules to better address ongoing problems in the completion of long-distance telephone calls to rural areas. Specifically, we require covered providers to monitor intermediate provider performance, and eliminate the data reporting requirements created by the Commission in 2013.<sup>4</sup> The requirements we adopt today will be more effective and less burdensome than the prior reporting regime established in the *RCC Order*.

3. All Americans should have confidence that when a call is made to them, they will receive it. But for Americans living in rural or remote areas of the country, too often that is not the case. Call completion problems manifest in a variety of ways—for example, callers may experience false ring tones or busy signals while the called party's phone may never ring at all; or when a call goes through, one or both parties to a call may be unable to hear the other; or the caller ID may show an inaccurate number; or calls to rural numbers may be significantly delayed.<sup>5</sup> Regardless of how the caller and/or called party experiences a call completion problem, the failures have serious repercussions, imposing needless economic and personal costs, and potentially threatening public safety in local communities.<sup>6</sup> We continue to conclude that a key reason for rural call completion issues is that calls to rural areas are often handled by numerous different providers, and that providers' incentives to minimize their intercarrier compensation payments contributes to problems involving carriers blocking or degrading traffic to rural areas.

4. The actions that we take today demonstrate and reflect our continued commitment to solve the ongoing problems in the completion of long-distance telephone calls to rural areas using a multi-faceted approach requiring diverse solutions and aggressive action by all participants in the call completion process. Given our experience collecting and analyzing rural call completion data and addressing rural call completion problems identified by rural consumers, we reorient our existing rural call completion rules to better reflect strategies that have worked to reduce rural call completion problems while at the same time reducing the overall burden of our rules on providers. Our new measures are

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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. 847 (1996).

<sup>2</sup> See *Rural Call Completion*, WC Docket No. 13-39, Second Further Notice of Proposed Rulemaking, 32 FCC Rcd 6047, 6064, Appx. B (2017) (*RCC 2nd FNPRM*).

<sup>3</sup> See 5 U.S.C. § 604.

<sup>4</sup> *Rural Call Completion*, WC Docket No. 13-39. Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16155, para. 1 & n.1 (2013) (*RCC Order*).

<sup>5</sup> *RCC Order*, 28 FCC Rcd at 16160-61, paras. 13-14; see also *FCC Enforcement Advisory: Rural Call Completion*, Public Notice, 28 FCC Rcd 10347, 10348 (EB 2013).

<sup>6</sup> *RCC Order*, 28 FCC Rcd at 16161, para. 14.

informed by the record in this proceeding and our investigations of entities that have failed to ensure that calls are appropriately routed and delivered to rural areas.

5. First, we adopt a new rule requiring “covered providers”—entities that select the initial long-distance route for a large number of lines—to monitor the performance of the “intermediate providers” to which they hand off calls. By holding a central party responsible for call completion issues, it will be less likely for calls to “fall through the cracks” along a lengthy chain of intermediate providers. The monitoring rule encourages covered providers to ensure that calls are completed, assigns clear responsibility for call completion issues, and enhances our ability to take enforcement action where needed. To facilitate communication about problems that arise, we also require covered providers to make available a point of contact to address rural call completion issues. Our balanced approach ensures that covered providers exercise responsibility for rural call completion without imposing an unduly rigid or burdensome mandate; in addition, it seeks to expedite both the identification and resolution of call completion issues if and when they arise.

6. Next, we eliminate the reporting requirement for covered providers established in 2013 in the *RCC Order*.<sup>7</sup> We conclude that the existing reporting rules are burdensome on covered providers, while the resulting Form 480 reports are of limited utility to us in discovering the source of rural call completion problems and a pathway to their resolution. We further conclude that the monitoring rule we adopt will be more effective than the less-effective-than-hoped reporting obligation because it imposes a direct, substantive obligation.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

7. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

**C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration**

8. The Chief Counsel did not file any comments in response to this proceeding.

**D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply**

9. The RFA directs agencies to provide a description and, where feasible, an estimate of the number of small entities that may be affected by the final rules adopted pursuant to the *RCC 2nd FNPRM*.<sup>8</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>9</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>10</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>11</sup>

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<sup>7</sup> *RCC Order*, 28 FCC Rcd at 16164, 16184-85, paras. 19, 65-67; see also *Rural Call Completion*, Notice of Proposed Rulemaking, 28 FCC Rcd 1569 (2013) (*RCC NPRM*).

<sup>8</sup> See 5 U.S.C. § 604(a)(4).

<sup>9</sup> See 5 U.S.C. § 601(6).

<sup>10</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>11</sup> See 15 U.S.C. § 632.

10. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.<sup>12</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>13</sup> These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.<sup>14</sup>

11. Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."<sup>15</sup> Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS).<sup>16</sup>

12. Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."<sup>17</sup> U.S. Census Bureau data from the 2012 Census of Governments<sup>18</sup> indicates that there were 90,056 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.<sup>19</sup> Of this number there were 37, 132 General purpose governments (county<sup>20</sup>, municipal and town or township<sup>21</sup>) with populations of

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<sup>12</sup> See 5 U.S.C. § 601(3)-(6).

<sup>13</sup> See SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016)

<sup>14</sup> See SBA, Office of Advocacy, "Frequently Asked Questions, Question 2- How many small business are there in the U.S.?" [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>15</sup> 5 U.S.C. § 601(4).

<sup>16</sup> Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. See <http://nccsweb.urban.org/tablewiz/bmf.php> where the report showing this data can be generated by selecting the following data fields: Show: "Registered Nonprofit Organizations"; By: "Total Revenue Level (years 1995, Aug to 2016, Aug)"; and For: "2016, Aug" then selecting "Show Results".

<sup>17</sup> 5 U.S.C. § 601(5).

<sup>18</sup> See 13 U.S.C. § 161. The Census of Government is conducted every five (5) years compiling data for years ending with "2" and "7". See also Program Description Census of Government <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=program&id=program.en.COG#>.

<sup>19</sup> See U.S. Census Bureau, 2012 Census of Governments, Local Governments by Type and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG02.US01>. Local governmental jurisdictions are classified in two categories - General purpose governments (county, municipal and town or township) and Special purpose governments (special districts and independent school districts).

<sup>20</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>. There were 2,114 county governments with populations less than 50,000.

<sup>21</sup> See U.S. Census Bureau, 2012 Census of Governments, Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States – States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>. There were 18,811 municipal and 16,207 town and township governments with populations less than 50,000.

less than 50,000 and 12,184 Special purpose governments (independent school districts<sup>22</sup> and special districts<sup>23</sup>) with populations of less than 50,000. The 2012 U.S. Census Bureau data for most types of governments in the local government category shows that the majority of these governments have populations of less than 50,000.<sup>24</sup> Based on this data we estimate that at least 49,316 local government jurisdictions fall in the category of “small governmental jurisdictions.”<sup>25</sup>

13. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “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 communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>26</sup> 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.<sup>27</sup> Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>28</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

14. *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 NAICS Code category is for Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>29</sup>

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<sup>22</sup> See U.S. Census Bureau, 2012 Census of Governments, Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. There were 12,184 independent school districts with enrollment populations less than 50,000.

<sup>23</sup> See U.S. Census Bureau, 2012 Census of Governments, Special District Governments by Function and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG09.US01>. [The U.S. Census Bureau data did not provide a population breakout for special district governments.](#)

<sup>24</sup> See U.S. Census Bureau, 2012 Census of Governments, County Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG06.US01>; Subcounty General-Purpose Governments by Population-Size Group and State: 2012 - United States-States - <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG07.US01>; and Elementary and Secondary School Systems by Enrollment-Size Group and State: 2012 - United States-States. <https://factfinder.census.gov/bkmk/table/1.0/en/COG/2012/ORG11.US01>. While U.S. Census Bureau data did not provide a population breakout for special district governments, if the population of less than 50,000 for this category of local government is consistent with the other types of local governments the majority of the 38,266 special district governments have populations of less than 50,000.

<sup>25</sup> *Id.*

<sup>26</sup> U.S. Census Bureau, 2012 NAICS Definitions, “517110 Wired Telecommunications Categories,” <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>27</sup> See 13 CFR § 120.201, NAICS Code 517110.

<sup>28</sup> 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodTpe=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodTpe=table).

<sup>29</sup> See 13 CFR § 120.201, 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodTpe=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodTpe=table).

Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>30</sup> The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

15. *Incumbent Local Exchange Carriers (incumbent LECs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>31</sup> According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>32</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. One thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>33</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>34</sup>

16. *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 NAICS Code category is Wired Telecommunications Carriers, as defined in paragraph 11 of this FRFA. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>35</sup> Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers are small entities. 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>36</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. 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>37</sup> In addition, 72 carriers have reported that they are Other Local Service Providers.<sup>38</sup> Of this total, 70 have 1,500 or fewer employees.<sup>39</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 the adopted rules.

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<sup>30</sup> 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>31</sup> See 13 CFR § 120.201, NAICS Code 517110.

<sup>32</sup> 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<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> *Id.*

<sup>35</sup> [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>36</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*



17. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined in paragraph 11 of this FRFA. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>40</sup> According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>41</sup> Of this total, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees.<sup>42</sup> Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted.

18. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>43</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>44</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.<sup>45</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.

19. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>46</sup> The SBA has developed a small business size standard for the category of Telecommunications Resellers.<sup>47</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>48</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>49</sup> Thus, under this category and the associated small business size standard, the majority of

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<sup>40</sup> 13 CFR § 121.201, 2012 U.S. Economic Census, NAICS code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodTtype=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodTtype=table).

<sup>41</sup> See *Trends in Telephone Service*, at tbl. 5.3.

<sup>42</sup> *Id.*

<sup>43</sup> 2012 U.S. Economic Census, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>44</sup> 13 CFR § 121.201, 2012 U.S. Economic Census, NAICS code 517911.

<sup>45</sup> U.S. Census Bureau, 2012 Economic Census, Subject Series: Information, “Establishment and Firm Size,” NAICS code 517911.

<sup>46</sup> 2012 U.S. Economic Census, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012>.

<sup>47</sup> 13 CFR § 121.201, NAICS code 517911.

<sup>48</sup> 2012 U.S. Economic Census, NAICS Code 517911, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodTtype=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodTtype=table).

<sup>49</sup> *Id.*

these resellers 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>50</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>51</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

20. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition 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 NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>52</sup> Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>53</sup> Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>54</sup> Of these, an estimated 279 have 1,500 or fewer employees.<sup>55</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the *RCC 2nd FNRPM*.

21. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.<sup>56</sup> According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards.<sup>57</sup> The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

22. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>58</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, Census data for 2012 show that there were 967

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<sup>50</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>51</sup> *Id.*

<sup>52</sup> 13 CFR § 121.201, 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>53</sup> 2012 U.S. Economic Census, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>54</sup> *Trends in Telephone Service*, at tbl. 5.3.

<sup>55</sup> *Id.*

<sup>56</sup> 13 CFR § 121.201, 2012 U.S. Economic Census, NAICS Code 517110, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>57</sup> See <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited Mar. 22, 2018).

<sup>58</sup> 2012 U.S. Economic Census, NAICS Code 517210, <https://www.census.gov/econ/isp/sampler.php?naicscode=517210&naicslevel=6#>.

firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees.<sup>59</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities. Similarly, according to internally developed 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) services.<sup>60</sup> Of this total, an estimated 261 have 1,500 or fewer employees.<sup>61</sup> Consequently, the Commission estimates that approximately half of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

23. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>62</sup> The SBA has approved these definitions.<sup>63</sup>

24. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>64</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>65</sup> According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>66</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>67</sup> Therefore, a little less than one third of these entities can be considered small.

25. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g. limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>68</sup> The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees.<sup>69</sup> The 2012 Economic Census indicates that 367 firms were operational

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<sup>59</sup> 2012 U.S. Economic Census, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodTpe=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodTpe=table).

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

<sup>61</sup> *Id.*

<sup>62</sup> *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, GN Docket No. 96-228, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>63</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

<sup>64</sup> 13 CFR § 121.201, 2012 U.S. Economic Census, NAICS code 517210.

<sup>65</sup> *Id.*

<sup>66</sup> *Trends in Telephone Service*, tbl. 5.3.

<sup>67</sup> *Id.*

<sup>68</sup> See 2012 U.S. Economic Census, <https://www.census.gov/agi-bin/ssd/naics/naicsrch>.

<sup>69</sup> 13 CFR § 121.201; 20116 NAICSs Code 515210.

for that entire year. Of this total, 357 operated with less than 1,000 employees.<sup>70</sup> Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

26. *Cable Companies and Systems (Rate Regulation)*. 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 there are currently 4,600 active cable systems in the United States.<sup>72</sup> Of this total, all but nine cable operators nationwide are small under the 400,000-subscriber size standard.<sup>73</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>74</sup> Current Commission records show 4,600 cable systems nationwide.<sup>75</sup> Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.<sup>76</sup> Thus, under this standard as well, we estimate that most cable systems are small entities.

27. *Cable System Operators (Telecom Act Standard)*. The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000 are approximately 52,403,705 cable video subscribers in the United States today.<sup>77</sup> Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>78</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>79</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>80</sup> Although it seems certain that some of these cable system operators are affiliated

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<sup>70</sup> See 2012 U.S. Economic Census, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ5&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ5&prodType=table).

<sup>71</sup> 47 CFR § 76.901(e)

<sup>72</sup> Federal Communications Commission, Assessment and Collection of Regulatory Fees for Fiscal Year 2014; Assessment and Collection of Regulatory Fees for Fiscal Year 2013; and Procedures for Assessment and Collection of Regulatory Fees, 80 Fed. Reg. 66815 (Oct. 30, 2015) (citing August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS)). See [www.fcc.gov/coals](http://www.fcc.gov/coals).

<sup>73</sup> See SNL KAGAN at <https://www.snl.com/interactiveX/MyInteractive.aspx?mode=4&CDID=A-821-38606&KLPT=8> (subscription required).

<sup>74</sup> 47 CFR § 76.901(c).

<sup>75</sup> See *supra* note 45.

<sup>76</sup> *Id.*

<sup>77</sup> *Assessment and Collection of Regulatory Fees for Fiscal Year 2016, Notice of Proposed Rulemaking*, MD Docket No. 16-166, 31 FCC Rcd 5757, Appendix E para. 23 (2016) (citing Office of Management and Budget (OMB) Memorandum M-10-06, Open Government Directive, Dec. 8, 2009).

<sup>78</sup> 47 CFR § 76.901(f).

<sup>79</sup> *Assessment & Collection of Regulatory Fees for Fiscal Year 2016, Notice of Proposed Rulemaking*, 31 FCC Rcd 5757, Appendix E para. 23 (2016).

<sup>80</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f)

(continued...)

with entities whose gross annual revenues exceed \$250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

28. *All Other Telecommunications.* “All Other Telecommunications” is defined as follows: “This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite 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>81</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>82</sup> For this category, Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million.<sup>83</sup> Consequently, we conclude that the majority of All Other Telecommunications firms can be considered small.

#### **E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements**

29. In this *Order*, we revise our rules to better address ongoing problems in the completion of long-distance telephone calls to rural areas. Specifically, we require covered providers to actively monitor intermediate provider performance, and eliminate the data reporting requirements created by the Commission in 2013.

30. Regarding our monitoring requirements, we require covered providers to monitor the performance of each intermediate provider with which they contract. Required monitoring entails both *prospective* evaluation to prevent problems and *retrospective* investigation of any problems that arise. We also require covered providers take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider. Additionally, we specify that covered providers must publish point of contact information for rural call completion issues.

31. Regarding our rural call completion recording, retention, and reporting rules, we eliminate the data reporting requirement. The safe harbor provisions established in the *RCC Order* will remain in effect; covered providers qualifying for the safe harbor will continue to be exempt from the remaining recording and retention requirements.

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

32. 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

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of the Commission’s rules. See 47 CFR § 76.901(f).

<sup>81</sup>2012 U.S. Economic Census, <https://www.census.gov/econ/isp/sampler.php?naicscode=517919&naicslevel=6>.

<sup>82</sup> 13 CFR § 121.201; 2012 U.S. Economic Census, NAICS Code 517919.

<sup>83</sup> U.S. Census Bureau, *2012 Economic Census of the United States*, Table EC0751SSSZ1, Information: Subject Series - Establishment and Firm Size: Receipts Size of Firms for the United States: 2012 NAICS Code 517919, [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ1&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ1&prodType=table).

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>84</sup>

33. The *Order* adopts reforms that are likely to reduce burdens on covered providers, including small entities. As described in the *Order*, in adopting these reforms, we have sought comment on the impact of our rule changes on smaller providers, and considered significant alternatives. Regarding our intermediate provider monitoring requirement for covered providers, we considered, but declined to adopt, a mandate that covered providers adhere to the standards and best practices outlined in the ATIS *Intercarrier Call Completion/Call Termination Handbook* (ATIS RCC Handbook), finding that mandating the ATIS RCC Handbook best practices could have a chilling effect on future industry cooperation to develop solutions to industry problems, and that covered providers should have the flexibility to determine the standards and methods best suited to their individual networks.

34. Under the monitoring requirement, covered providers must exercise responsibility for the entire intermediate provider call path to help ensure that calls to rural areas are completed. Because “covered providers” excludes entities with low call volumes, we expect that covered providers are of sufficient size to negotiate appropriate provisions with any intermediate providers with which they contract. As stated above, although we encourage limiting the use of intermediate providers, we do not impose a rigid cap on the number of intermediate providers. Similarly, we do not mandate that covered providers must contract with all intermediate providers in the call path. In adopting this approach, we considered, but declined to adopt, a requirement that covered providers *directly* monitor the performance of intermediate providers with which they lack a contractual relationship. Because covered providers must monitor the performance of intermediate providers with which they contract and must ensure that those covered providers take appropriate measures to ensure calls are completed, we find mandating direct covered provider monitoring of the entire call chain unnecessarily burdensome. Regarding our requirement that covered providers provide and maintain point of contact information for rural call completion issues, we find that this is a low-cost measure to facilitate industry collaboration to address call completion issues.

35. Further, we considered, but declined to adopt, specific performance targets or benchmarks for call answer rates, call completion rates, or any other performance metric, or certification or audit requirements in conjunction with the monitoring rule, finding the burdens associated with these approaches to outweigh their likely benefits. For the same reason, after consideration, we declined to adopt a mandate that terminating rural carriers activate an automated test line, or augment trunks used for RCC paths when they reach a monthly utilization rate of 80%.

36. Regarding our recording, retention, and reporting requirements, we find that eliminating the data reporting requirements created by the *RCC Order* is likely to offer a better and more efficient balance between our need for information pertaining to rural call completion problems and the burdens such data collection efforts place on service providers, including any affected small entities. In adopting this approach, we considered, but declined to adopt, a modified or supplementary data collection requirement, finding that the burdens of such an approach on covered providers would outweigh the likely benefits.

#### **G. Report to Congress**

37. The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>85</sup> In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the

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<sup>84</sup> 5 U.S.C. § 603(c).

<sup>85</sup> See 5 U.S.C. § 801(a)(1)(A).

SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>86</sup>

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<sup>86</sup> See 5 U.S.C. § 604(b).



## APPENDIX E

## 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 *Third Further Notice of Proposed Rulemaking*. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Third Further Notice of Proposed Rulemaking*. The Commission will send a copy of the *Third Further Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Third Further Notice of Proposed Rulemaking* 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. We are committed to ensuring that calls are completed to all Americans, including those in rural America. Rural call completion problems manifest themselves in a number of ways. For example, a call may be significantly delayed, the called party's phone may never ring, or the caller may hear false ring tone or busy signals. These failures have significant public interest ramifications, causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and potentially creating dangerous delays in public safety communications in such areas.

3. While there appear to be multiple factors that cause rural call completion problems, one key factor is that a call to a rural area is often handled by numerous different providers in the call's path. The *Third Further Notice of Proposed Rulemaking* proposes and seeks comment on rules to implement the recently-enacted Improving Rural Call Quality and Reliability Act of 2017 (RCC Act).<sup>4</sup> The RCC Act directs us to (1) promulgate registration requirements for intermediate providers within 180 days of enactment, and create a registry for such providers on our website; and (2) establish service quality standards for intermediate providers within one year of enactment.<sup>5</sup> We propose and seek comment on rules to implement the registry provisions of the RCC Act. We further seek comment generally on possible frameworks to implement the service quality standards provisions of the RCC Act. We also seek comment on sunseting the recording and retention rules established in the *RCC Order* upon implementation of the RCC Act. As we move forward, we will work quickly to implement the RCC Act and continue take other measures as necessary "to ensure the integrity of voice communications and to prevent unjust or unreasonable discrimination among areas of the United States in the delivery of such communications."<sup>6</sup>

**B. Legal Basis**

4. The legal basis for any action that may be taken pursuant to the *Third Further Notice of Proposed Rulemaking* is contained in sections 1, 4(i), 201(b), 202(a), 218, 220(a), 251(a), 262, and 403 of

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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. 845 (1996).

<sup>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

<sup>4</sup> Improving Rural Call Quality and Reliability Act of 2017, Pub. L. No. 115-129 (2018) ("RCC Act").

<sup>5</sup> See generally *id.*

<sup>6</sup> *Id.* at Preamble.



the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), 262, and 403.<sup>7</sup>

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

5. 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 and by the rule revisions on which the NPRM seeks comment, if adopted.<sup>8</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>9</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>10</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>11</sup>

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.<sup>12</sup> First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.<sup>13</sup> These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.<sup>14</sup> Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”<sup>15</sup> Nationwide, as of 2007, there were approximately 1,621,215 small organizations.<sup>16</sup> Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>17</sup> U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United

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<sup>7</sup> The RCC Act provides additional legal basis for adoption of any registration and service quality requirements for intermediate providers. See Pub. L. No. 115-129.

<sup>8</sup> See 5 U.S.C. § 603(b)(3).

<sup>9</sup> See 5 U.S.C. § 601(6).

<sup>10</sup> 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>11</sup> See 15 U.S.C. § 632.

<sup>12</sup> See 5 U.S.C. § 601(3)-(6).

<sup>13</sup> See SBA, Office of Advocacy, “Frequently Asked Questions, Question 1 – What is a small business?” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>14</sup> See SBA, Office of Advocacy, “Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?” [https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016\\_WEB.pdf](https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf) (June 2016).

<sup>15</sup> 5 U.S.C. § 601(4).

<sup>16</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

<sup>17</sup> 5 U.S.C. § 601(5).

States.<sup>18</sup> We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”<sup>19</sup> Thus, we estimate that most governmental jurisdictions are small.

7. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “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 communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.”<sup>20</sup> 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.<sup>21</sup> Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>22</sup> Thus, under this size standard, the majority of firms in this industry can be considered small.

8. *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 NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>23</sup> According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>24</sup> The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

9. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>25</sup> According to Commission data, 3,117 firms

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<sup>18</sup> U.S. Census Bureau, Statistical Abstract of the United States: 2012 at 267, Table 428 (2011), <http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf> (citing data from 2007).

<sup>19</sup> The 2012 U.S. Census Bureau data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. See U.S. Census Bureau, City and Town Totals Vintage: 2011, <http://www.census.gov/popest/data/cities/totals/2011/index.html>. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

<sup>20</sup> U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 21, 2017)

<sup>21</sup> 13 CFR § 121.201 (NAICS Code 517110).

<sup>22</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>23</sup> 13 CFR § 121.201 (NAICS Code 517110).

<sup>24</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>25</sup> 13 CFR § 121.201 (NAICS Code 517110).

operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>26</sup> Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.<sup>27</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>28</sup>

10. 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 NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>29</sup> U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>30</sup> Based on this data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. 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>31</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.<sup>32</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>33</sup> Also, 72 carriers have reported that they are Other Local Service Providers.<sup>34</sup> Of this total, 70 have 1,500 or fewer employees.<sup>35</sup> Consequently, based on internally researched FCC data, 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.

11. 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>36</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>37</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize

<sup>26</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>27</sup> See Fed. Commc’ns Comm’n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>28</sup> *Id.*

<sup>29</sup> 13 CFR § 121.201 (NAICS Code 517110).

<sup>30</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>31</sup> See Fed. Commc’ns Comm’n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> 5 U.S.C. § 601(3).

<sup>37</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA

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that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

12. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>38</sup> U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.<sup>39</sup> According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.<sup>40</sup> Of this total, an estimated 317 have 1,500 or fewer employees.<sup>41</sup> Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

13. *Local Resellers*. The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>42</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>43</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.<sup>44</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.

14. *Toll Resellers*. The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.<sup>45</sup> The SBA has developed a small business

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incorporates into its own definition of “small business.” 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

<sup>38</sup> 13 CFR § 121.201 (NAICS Code 517110).

<sup>39</sup> See U.S. Census Bureau, American Fact Finder (Jan. 08, 2016), [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodTpe=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodTpe=table).

<sup>40</sup> See Fed. Commc’ns Comm’n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>41</sup> *Id.*

<sup>42</sup> U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017).

<sup>43</sup> 13 CFR § 121.201 (NAICS code 517911).

<sup>44</sup> See U.S. Census Bureau, American Fact Finder (Jan. 08, 2016), [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodTpe=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodTpe=table).

<sup>45</sup> U.S. Census Bureau, *2012 NAICS Definition*, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017) (NAICS 517911 Telecommunications Resellers).

size standard for the category of Telecommunications Resellers.<sup>46</sup> Under that size standard, such a business is small if it has 1,500 or fewer employees.<sup>47</sup> Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.<sup>48</sup> Thus, under this category and the associated small business size standard, the majority of these resellers 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>49</sup> Of this total, an estimated 857 have 1,500 or fewer employees.<sup>50</sup> Consequently, the Commission estimates that the majority of toll resellers are small entities.

15. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition 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 NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.<sup>51</sup> Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.<sup>52</sup> Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.<sup>53</sup> Of these, an estimated 279 have 1,500 or fewer employees.<sup>54</sup> Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the Second Further Notice.

16. *Prepaid Calling Card Providers.* The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.<sup>55</sup> According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards.<sup>56</sup> The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

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<sup>46</sup> 13 CFR § 121.201 (NAICS code 517911).

<sup>47</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>48</sup> *Id.*

<sup>49</sup> Fed. Comm'n's Comm'n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>50</sup> *Id.*

<sup>51</sup> 13 CFR § 121.201 (NAICS code 517110).

<sup>52</sup> See U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table).

<sup>53</sup> Fed. Comm'n's Comm'n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>54</sup> *Id.*

<sup>55</sup> 13 CFR § 121.201 (NAICS code 517110).

<sup>56</sup> See Fed. Comm'n's Comm'n, *FCC Form 499 Filer Database*, <http://apps.fcc.gov/cgb/form499/499a.cfm> (Mar. 22, 2018).



17. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.<sup>57</sup> The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.<sup>58</sup> For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.<sup>59</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>60</sup> Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

18. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today.<sup>61</sup> The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.<sup>62</sup> Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.<sup>63</sup> Thus, using available data, we estimate that the majority of wireless firms can be considered small.

19. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years.<sup>64</sup> The SBA has approved these definitions.<sup>65</sup>

20. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small

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<sup>57</sup> See U.S. Census Bureau, *American Fact Finder—About the Data*, <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210> (NAICS Code 517210).

<sup>58</sup> 13 CFR § 121.201 (NAICS code 517210).

<sup>59</sup> U.S. Census Bureau, *American Fact Finder* (Jan 08, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table) (NAICS 51720, “Subject Series - Estab & Firm Size: Employment Size of Establishments for the U.S.: 2012”).

<sup>60</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 “1000 employees or more.”

<sup>61</sup> See Fed. Commc'ns Comm'n, *Universal Licensing System*, <http://wireless.fcc.gov/uls> (last visited Mar. 22, 2018). For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

<sup>62</sup> See Fed. Commc'ns Comm'n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>63</sup> See *id.*

<sup>64</sup> *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

<sup>65</sup> See Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>66</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>67</sup> According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>68</sup> Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>69</sup> Therefore, a little less than one third of these entities can be considered small.

21. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g. limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.<sup>70</sup> The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees.<sup>71</sup> The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees.<sup>72</sup> Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

22. *Cable Companies and Systems (Rate Regulation).* 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>73</sup> Industry data indicate that there are currently 4,600 active cable systems in the United States.<sup>74</sup> Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard.<sup>75</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>76</sup> Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.<sup>77</sup> Thus, under this standard as well, we estimate that most cable systems are small entities.

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<sup>66</sup> 13 CFR § 121.201 (NAICS code 517210).

<sup>67</sup> *Id.*

<sup>68</sup> Fed. Comm'n's Comm'n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), [http://hraunfoss.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>69</sup> *Id.*

<sup>70</sup> See U.S. Census Bureau, 2012 NAIC Definition, <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515210&search=2012+NAICS+Search&search=2012> (last visited June 20, 2017) (2012 NAICS code, "515210 Cable and Other Subscription Programming").

<sup>71</sup> 13 CFR § 121.201 (NAICSs Code 515210).

<sup>72</sup> See U.S. Census Bureau, *American Fact Finder* (Jan 08, 2016), [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table) (NAICS code 51510, "Estab & Firm Size: Employment Size of Establishments for the U.S.>").

<sup>73</sup> 47 CFR § 76.901(e).

<sup>74</sup> This figure was derived from a August 15, 2015 report from the FCC Media Bureau, based on data contained in the Commission's Cable Operations and Licensing System (COALS). See <http://www.fcc.gov/coals> (last visited Mar. 22, 2018).

<sup>75</sup> Data obtained from SNL Kagan database on April 19, 2017.

<sup>76</sup> 47 CFR § 76.901(c).

<sup>77</sup> August 5, 2015 report from the FCC Media Bureau based on its research in COALS. See Fed. Comm'n's Comm'n, *COALS CF WebSite*, <http://www.fcc.gov/coals> (Cable Operations and Licensing System).

23. *Cable System Operators (Telecom Act Standard)*. The Communications Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.”<sup>78</sup> There are approximately 52,403,705 cable video subscribers in the United States today.<sup>79</sup> Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.<sup>80</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>81</sup> We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million.<sup>82</sup> Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. *All Other Telecommunications*. “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite 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>83</sup> The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less.<sup>84</sup> For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million.<sup>85</sup> Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

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

25. The *Third Further Notice of Proposed Rulemaking* proposes and seeks comment on rule changes that will affect reporting, recordkeeping, and other compliance requirements. In particular, the *Third Further Notice of Proposed Rulemaking* proposes to adopt the definitions of the terms “intermediate provider”, “covered voice communication”, and “covered provider” provided in the RCC

<sup>78</sup> 47 CFR § 76.901(f) & nn.1-3.

<sup>79</sup> See SNL Kagan at <http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx> (subscription required).

<sup>80</sup> 47 CFR § 76.901(f) & nn.1-3.

<sup>81</sup> See SNL Kagan at <http://www.snl.com/interactivex/TopCableMSOs.aspx> (subscription required).

<sup>82</sup> The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority’s finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission’s rules. See 47 CFR § 76.901(f).

<sup>83</sup> U.S. Census Bureau, *NAICS Search*, <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 21, 2017) (enter 2012 NAICS code 517919).

<sup>84</sup> 13 CFR § 121.201 (NAICS Code 517919).

<sup>85</sup> U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), [http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodT\\_ypt=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodT_ypt=table) (2012 NAICS Code 517919, “Estab & Firm Size: Receipts Size of Firms for the U.S.”).



Act in our rules. With respect to the RCC Act's registry requirements, we propose and seek comment on rules to implement those provisions, and seek comment on: (a) how to interpret and implement the RCC Act's prohibition on covered providers' use of unregistered intermediate providers; (b) how best to ensure compliance with that prohibition; (c) whether we should adopt any exceptions to the prohibition on using unregistered intermediate providers, and (d) whether any such exceptions would be consistent with the RCC Act. The *Third Further Notice of Proposed Rulemaking* also proposes to require intermediate providers to take reasonable steps to abide by certain industry best practices for rural call completion, and to have processes in place to monitor their own rural call completion performance when transmitting covered voice communications. We seek comment on how to enforce the registration and service quality requirements that we adopt for intermediate providers. Should the Commission adopt these proposals, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping, or other compliance requirements for covered providers.

26. In the *Third Further Notice of Proposed Rulemaking*, we also propose to retain the three qualification requirements of our existing safe harbor rule,<sup>86</sup> and seek comment on sunsetting the recording and retention rules established in the *RCC Order* upon implementation of the RCC Act. Should the Commission adopt these measures, we expect such action to reduce reporting, recordkeeping, and other compliance requirements. Specifically, these measures should have a beneficial reporting, recordkeeping, or compliance impact on small entities because many providers will be subject to fewer such burdens.

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

27. 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>87</sup>

28. The *Third Further Notice of Proposed Rulemaking* seeks comment on a variety of proposals to implement the registry provisions of the RCC Act and possible frameworks to implement the service quality standards provisions of the RCC Act. It also specifically seeks comment on the benefits and burdens to smaller providers of our proposals (and any potential alternative proposals) for structuring and managing the intermediate provider registry. With respect to possible frameworks to implement the service quality standards, the *Third Further Notice of Proposed Rulemaking* seeks comment on the costs, benefits, and impact on smaller intermediate providers of each of the proposals outlined and each potential alternative proposed by commenters. We also seek comment on how to interpret and implement the RCC Act's prohibition on covered providers' use of unregistered intermediate providers, and we seek comment on the costs and benefits (including to smaller providers) and implementation issues for each potential interpretation.

29. The *Third Further Notice of Proposed Rulemaking* seeks comment on all of our proposals, as well as alternatives that could also address rural call completion problems while reducing burdens on small providers. In the *Third Further Notice of Proposed Rulemaking*, we explicitly seek comment on the impact of our proposals on small providers. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *Third Further Notice of Proposed Rulemaking*, in reaching its final conclusions and taking action in this proceeding.

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<sup>86</sup> 47 CFR § 64.2107(a).

<sup>87</sup> 5 U.S.C. § 603(c).

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

30. None.

**STATEMENT OF  
CHAIRMAN AJIT PAI**

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

All Americans should have confidence that when a telephone call is made to them, their phone will ring. But that's not always the case in rural or remote parts of the United States. Call failures, ranging from dead air to messages incorrectly saying a number is not in service, are a nuisance that can have costly repercussions. And unfortunately, despite FCC rules adopted in 2013, this problem has not gone away.

Today's *Order* reflects what I believe will be a more effective approach for tackling rural call completion problems. Specifically, the *Order* requires "covered providers" to monitor the performance of their "intermediate providers." Intermediate providers are entities that carry a call somewhere along the way to its destination and are often the cause of call completion problems. Holding covered providers responsible for addressing call completion issues should reduce the likelihood of a call failure in the middle of the calling "chain."

Additionally, we end a paperwork requirement which has proven to be unduly burdensome and not as helpful as we had hoped it would be. The Wireline Competition Bureau found last year that the rural call completion data collection that began in 2013 "provides a less than clear understanding of the overall state of rural call completion performance."<sup>1</sup> In particular, the Bureau reported that problems with the information collection "preclude us from drawing firm conclusions from the data."<sup>2</sup> That just doesn't cut it. And the requirement mentioned above—that covered providers monitor their intermediate brethren—makes this data collection expendable.

One last note: Recently, Congress enacted the Improving Rural Call Quality and Reliability Act of 2017. This legislation imposes new obligations on the FCC—obligations upon which the *Further Notice* focuses. To help us as we consider how to implement the law, we preserve for now the recording and retention requirements for the data that covered providers previously submitted to the FCC. This ensures that this information will remain available to the Commission, if needed, as we carry out the Act.

Thanks to the many staff who worked on this item. In particular: Pam Arluk, Matthew Collins, Adam Copeland, Melissa Droller Kirkel, Alex Espinoza, Victoria Goldberg, Alexis Johns, Daniel Kahn, Edward Krachmer, Kris Monteith, Eric Ralph, Steve Rosenberg, Zachary Ross, Arielle Roth, and D'wana Terry of Wireline Competition Bureau; Rizwan Chowdhry, Margaret Dailey, Jeffrey Gee, Rosemary Harold, Robert Krinsky, Kalun Lee, Keith Morgan, Geoffrey Starks, and Amer Zain of the Enforcement Bureau; James Brown, Micah Caldwell, Renee Moore, Karen Peltz Strauss, Suzy Singleton, and Sharon Wright of the Consumer & Governmental Affairs Bureau; Martha Heller and Diana Sokolow of the Media Bureau; Eric Burger of the Office of Strategic Planning & Policy Analysis; and Terry Cavanaugh, Richard Mallen, Linda Oliver, and Bill Richardson of the Office of General Counsel.

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<sup>1</sup> *Rural Call Completion*, WC Docket No. 13-39, Report, 32 FCC Rcd 4980, 4981, para. 2 (WCB, 2017).

<sup>2</sup> *Id.*

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

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

Five years ago, we adopted the *First Report and Order* on rural call completion. Today, we reaffirm our commitment to all Americans—especially those living in rural America—that every call matters.

Call failures impose high economic and personal costs, frustrate our universal service goals, and undermine a carrier's obligations to provide service without discrimination or undue prejudice to any locality. During times of emergency, even one call failure can be a threat to public safety and have disastrous results for everyone involved.

This Second Report and Order and Third Further Notice takes additional measures, and proposes further improvements for Americans living in rural areas who deserve the same degree of long-distance call reliability most Americans enjoy.

This item requires covered providers to monitor the performance of the “intermediate providers” to which they hand off calls. They must take reasonable steps to correct call completion issues, including removing the intermediate provider from a route after sustained inadequate performance. Today we leave no doubt that the covered provider is the one responsible for call completion issues, which enhances our ability to take enforcement action.

I would like to thank to my colleagues for remaining vigilant on this critical issue and including language directing the FCC staff to continue to monitor the state of call completion over the next several years and issue a report on the progress and the effectiveness of our rules. The stakes are high and we cannot rest until this problem is no more. For accommodating my other requests to reduce and resolve any discovered call completion issues without delay, I again thank my colleagues. These changes include treating adherence to the best practices in the ATIS Rural Call Completion Handbook as a safe harbor and requiring covered providers to respond to rural carriers complaining of rural call completion issues within a single business day.

The changes preserve carriers' flexibility to implement our rules, while assuring that the main goal of ensuring all Americans have access to reliable communication services is being fulfilled.

I would like to thank the team from the Wireline Competition Bureau for their dedicated work to ensure that rural America receives every call intended.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

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

Today, the Commission takes further steps to address rural call completion concerns. Although prior decisions and enforcement actions have targeted problematic practices leading to a significant decline in carrier complaints, this issue has remained a concern for some small rural providers and their customers.

Just recently, Congress spoke on the issue, enacting the Improving Rural Call Quality and Reliability Act of 2017. Therefore, it is our responsibility to implement the law, and the item seeks comment on how best to do so. The Commission also adopts rule changes to replace certain reporting requirements with an enhanced monitoring approach. We may have been wise to see the impact of the new law before considering broader changes to our rules, and we probably could have tackled some things differently. Nonetheless, I appreciate the work of my colleagues to help ensure that providers who take reasonable steps to safeguard against rural call completion problems are not subject to unwarranted enforcement actions.

I vote to approve.

**STATEMENT OF  
COMMISSIONER BRENDAN CARR**

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

In February, Congress passed legislation on rural call completion. It did so based on its determination that consumers continue to experience persistent problems with the completion of long-distance calls in rural areas. In too many cases, Congress found, calls simply don't go through, consumers receive false busy signals, or they are unable to hear the person on the other end of the line. Often, the problem can be traced back to what are known in the telecommunications industry as "intermediate providers." As part of an effort to limit the costs of terminating traffic, the first provider in the call chain will often select the cheapest intermediate provider, even though call quality can suffer as a result of that decision or the introduction of additional intermediate providers further down the call chain.

Congress focused on this problem by authorizing the FCC to take targeted action regarding the use of intermediate providers. So I am glad that we are initiating a Further Notice today that will implement this legislation, including by requiring intermediate providers to register with the FCC and comply with minimum service quality standards. Taking these steps will help enhance our oversight capabilities and better prevent the call completion problems we've seen to date.

I am also pleased that the Order portion of today's decision will eliminate the FCC's 2013 reporting requirements, which the record shows have not proven to be worth their costs. We replace that ineffective approach with a new monitoring requirement, which should provide better checks on the performance of intermediate providers. In this regard, I want to thank my colleagues for agreeing to edits that clarify the scope of this new monitoring requirement—changes that make clear we are focused on ensuring that covered providers make reasonable efforts to address persistent call completion problems. Moreover, part of our approach here relies on covered providers using contractual provisions to address the conduct of intermediate providers, so I also want to thank my colleagues for agreeing to establish a reasonable transition period for providers to review their contracts and implement any necessary changes. These revisions will help ensure that carriers have the flexibility to conduct monitoring in the way that works best for their respective networks, while also providing certainty about the FCC's expectations for covered providers.

With these changes, the item has my support. Thank you to the staff of the Wireline Competition Bureau for your work on this issue.

**STATEMENT OF  
COMMISSIONER JESSICA ROSENWORCEL**

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

This is about trust. When you pick up the phone to place a call, you should have every confidence that your call will go through. But in too many places in rural America that is not happening. Calls to friends and family will ring and ring and ring without ever being answered. Business connections will never get made. And worse, calls in times of crisis to public safety may not go through.

For too long, consumers in rural communities—and the carriers that serve them—have complained about this problem. Over the last few years, the FCC has answered their call, putting in place reporting obligations designed to fix this problem. It also has taken enforcement action against those carriers that fail to deliver calls. And yet, the problem persists. So today we fine-tune our prior efforts to help end this problem. We also implement the Rural Call Quality and Reliability Act, which was signed into law earlier this year.

I approve this order and rulemaking. But I am mindful that our work today may still need further adjustment. Because in the end, the only acceptable outcome is putting an end to this problem—and restoring trust. That may be a tall order for this agency—but it's a task we need to take on with vigor.