

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

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

SECOND FURTHER NOTICE OF PROPOSED RULEMAKING

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

TABLE OF CONTENTS

Table with 2 columns: Section Title and Page Number. Includes sections like I. INTRODUCTION, II. BACKGROUND, III. DISCUSSION, IV. PROCEDURAL MATTERS, V. ORDERING CLAUSES, APPENDIX A, and APPENDIX B.

I. INTRODUCTION

1. We are committed to ensuring that long-distance calls to all Americans—including rural Americans—are completed. In this Second Further Notice of Proposed Rulemaking, we propose to revise our rules to better address ongoing problems in the completion of long-distance telephone calls to rural areas.

taking action to address poor performance. We also seek comment on proposals to either modify or eliminate our existing recording, retention, and reporting rules. We seek comment on these proposals and possible alternatives or additional measures to address rural call completion problems.

## II. BACKGROUND

2. 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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> Given the relatively high rates long-distance providers incur to terminate long-distance calls to rural carriers, long-distance providers have an incentive to reduce the per-minute cost of calls. As a result, there is greater incentive for the long-distance provider to hand off a call to an intermediate provider that is offering to deliver it cheaply—and potentially less incentive to ensure that calls to rural areas are actually completed properly.<sup>4</sup>

3. *Prior Commission Actions.* The Commission has taken a series of actions in recent years to address rural call completion problems. In the 2011 *USF/ICC Transformation Order*,<sup>5</sup> the Commission adopted a transition plan to gradually reduce most termination charges, including those of rate-of-return carriers, to a bill-and-keep methodology—a transition which, when completed, should eliminate a significant amount of the financial incentive structure that contributes to rural call completion problems.<sup>6</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 to or from the PSTN.<sup>7</sup> Similarly, in 2007 and 2012, the Wireline Competition Bureau clarified that carriers are prohibited from blocking, choking, reducing, or restricting calls, including to avoid termination charges.<sup>8</sup> The *2012 RCC Declaratory Ruling* in particular clarified that: (1) "it is an unjust and unreasonable practice in violation of [S]ection 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"; and (2) 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 areas may constitute unjust

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<sup>1</sup> *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16155, para. 1 & n.1 (2013) (*2013 Rural Call Completion Order* or *2013 RCC Order* or *2013 RCC FNPRM*).

<sup>2</sup> *See id.* at 16155, para. 1 & n.2.

<sup>3</sup> *See id.* at 16162, paras. 16-17.

<sup>4</sup> *Id.* at 16162, para. 17.

<sup>5</sup> *See generally Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform-Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*).

<sup>6</sup> *See 2013 RCC Order*, 28 FCC Rcd at 16196, 16198, paras. 101, 104.

<sup>7</sup> *See USF/ICC Transformation Order*, 26 FCC Rcd at 17903, 18028-29, paras. 734, 973-974.

<sup>8</sup> *See generally Developing a Unified Intercarrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers*, Declaratory Ruling, 27 FCC Rcd 1351, para. 1 (WCB 2012) (*2012 RCC 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) (*2007 RCC Declaratory Ruling*).

or unreasonable discrimination in practices, facilities, or services in violation of Section 202 of the Act.<sup>9</sup> The *2012 RCC Declaratory Ruling* also reiterated that carriers are liable for the acts, omissions, or failures of their agents, including underlying providers used to deliver traffic, pursuant to Section 217 of the Act.<sup>10</sup>

4. *2013 RCC Order*. In 2013, the Commission initiated this proceeding<sup>11</sup> and adopted rules to address rural call completion problems, including recording, retention, and reporting rules and rules codifying the long-standing industry practice of prohibiting false ring signaling.<sup>12</sup> The Commission adopted the recordkeeping, retention, and reporting rules in an effort to improve its ability to monitor the delivery of long-distance calls to rural areas and take appropriate enforcement action as necessary.<sup>13</sup> These rules apply to providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines (including “the total of all of a provider’s business and residential fixed subscriber lines and mobile phones, aggregated over all of the provider’s affiliates”).<sup>14</sup> These “covered providers” include local exchange carriers (LECs), interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, and VoIP service providers.<sup>15</sup> Covered providers must record and retain, for six months, specific information about each call attempt to a rural operating company number (OCN)<sup>16</sup> from subscriber lines for which the providers make the initial long-distance call path choice.<sup>17</sup> Covered providers must also electronically file quarterly certified reports (via FCC Form 480)<sup>18</sup> with the Commission.<sup>19</sup> These reports must include specific information, separately for each month in the quarter, about call attempts to each rural OCN and to nonrural OCNs<sup>20</sup> in the aggregate, including whether call attempts are “answered,” or signaled as “busy,” “ring no answer,” or “unassigned number.”<sup>21</sup> Covered providers began recording the required data on April 1, 2015, and began submitting

<sup>9</sup> *2012 RCC Declaratory Ruling*, 27 FCC Rcd at 1355-58, paras. 12, 14.

<sup>10</sup> *Id.* at 1358, para. 15 (citing 47 U.S.C. § 217).

<sup>11</sup> *Rural Call Completion*, Notice of Proposed Rulemaking, 28 FCC Rcd 1569 (2013) (*2013 RCC NPRM*).

<sup>12</sup> *2013 RCC Order*, 28 FCC Rcd at 16200-01, paras. 111-112. 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 rural provider (*i.e.*, the calling party believes the phone is ringing at the called party’s premises when it is not). *Id.* at 16200, para. 111.

<sup>13</sup> *Id.* at 16155, 16164, paras. 2, 19; *Rural Call Completion*, Order on Reconsideration, 29 FCC Rcd 14026, 14026-27, para. 1 (*2014 RCC Reconsideration Order*).

<sup>14</sup> *2013 RCC Order*, 28 FCC Rcd at 16164-65, para. 20; *see also* 47 CFR § 64.2101.

<sup>15</sup> *2013 RCC Order*, 28 FCC Rcd at 16164, para. 19.

<sup>16</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>17</sup> *See 2013 RCC Order*, 28 FCC Rcd at 16182-84, paras. 61-65; 47 CFR § 64.2103.

<sup>18</sup> *See* FCC, Form 480 Filer Resources, <https://www.fcc.gov/general/form-480-filer-resources>.

<sup>19</sup> *2013 RCC Order*, 28 FCC Rcd at 16184-85, paras. 65-67; 47 CFR § 64.2105(a).

<sup>20</sup> The term “nonrural OCN” means an operating company number that uniquely identifies an incumbent LEC that is not a rural telephone company. 47 CFR § 64.2101. For purposes of the Commission’s recording, retention, and reporting requirements, the National Exchange Carrier Association (NECA) provides the definitive lists of rural OCNs and nonrural OCNs. *Id.*; *see also* NECA, ILEC OCN List (Nov. 7, 2016), *available at* <https://www.neca.org/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=11187&libID=11207> (last visited June 19, 2017).

<sup>21</sup> *See 2013 RCC Order*, 28 FCC Rcd at 16184, para. 65; 47 CFR § 64.2105(b).

their Form 480 reports on August 1, 2015.<sup>22</sup> Approximately 55 covered providers file such reports each quarter.<sup>23</sup>

5. *Safe Harbor.* The Commission also adopted the Managing Intermediate Provider Safe Harbor (“Safe Harbor”) to encourage providers to reduce the number of intermediate providers in a call path before the call reaches the terminating provider or terminating tandem to no more than two.<sup>24</sup> 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.<sup>25</sup> Two covered providers, AT&T and CenturyLink, have certified that they qualify for the Safe Harbor.<sup>26</sup>

6. *Duration of Recording, Retention, and Reporting Rules.* The *2013 Rural Call Completion Order* anticipated that the need for the recording, retention, and reporting rules would decrease, particularly as the transition to a bill-and-keep regime continued.<sup>27</sup> Therefore, the Commission directed the Wireline Competition Bureau to “analyze the eight sets of reports submitted during the first two years of the data collection’s effectiveness (as well as any other information the Commission receives during that period regarding the causes of and solution to rural call completion) and to publish for public comment a report on the effectiveness of the rules,” among other issues.<sup>28</sup> The Commission instructed the Bureau to publish the report no more than 90 days after the last reports are due for that two-year period (*i.e.*, by July 31, 2017).<sup>29</sup> Further, to ensure that the recording, retention, and reporting rules “do not last without review in perpetuity,” the Commission committed to complete a proceeding to “reevaluate whether to keep, eliminate, or amend the data collection and reporting rules three years after they become effective” (*i.e.*, by April 2, 2018).<sup>30</sup>

7. *2017 RCC Data Report.* Consistent with the Commission’s directive in the *2013 RCC Order*, the Wireline Competition Bureau has released the *2017 RCC Data Report*.<sup>31</sup> In the *Data Report*, the Bureau seeks to analyze the data collected in the first eight sets of quarterly reports (covering the period from April 2015 to March 2017) as directed by the Commission. The report shows, among other things: (1) a difference of approximately two percent between covered providers’ median call answer rates for rural and nonrural OCNs in the aggregate; and (2) no improvement in covered providers’ call answer rates to rural OCNs in the aggregate during that period.<sup>32</sup> At the same time, the Bureau cautions

<sup>22</sup> *Wireline Competition Bureau Announces That Certain Long Distance Providers Must Begin Recording the Data Required for Rural Call Completion Reporting*, Public Notice, 30 FCC Rcd 2058, 2059 (WCB 2015) (*2015 Data Recording Public Notice*).

<sup>23</sup> *Rural Call Completion*, Report, WC Docket No. 13-39, DA 17-595, at 5, para. 12 (WCB Jun. 22, 2017) (*2017 RCC Data Report* or *Data Report*).

<sup>24</sup> See 47 CFR § 64.2107; *2013 RCC Order*, 28 FCC Rcd at 16191-92, para. 86.

<sup>25</sup> 47 CFR § 64.2107(b)-(c).

<sup>26</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).

<sup>27</sup> *2013 RCC Order*, 28 FCC Rcd at 16196, paras. 101, 104-105.

<sup>28</sup> *Id.* at 16198, para. 105.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 16198, para. 106.

<sup>31</sup> See generally *2017 RCC Data Report*.

<sup>32</sup> See *id.* at 2, para. 2.

that its confidence in the reliability of the data collected is fairly low due to several issues. These include, among others: (1) potential inaccuracies in covered providers' categorization of call attempts (as answered, busy, ring no answer, or unassigned number) and the resulting call answer rates;<sup>33</sup> (2) the inclusion of autodialer traffic—which generally has lower call answer rates—in most covered providers' reports;<sup>34</sup> and (3) the inclusion of intermediate provider traffic and wholesale traffic in some covered providers' reports, which limits the utility and effectiveness of the data collection.<sup>35</sup> The *Data Report* finds that as a result of these data quality issues, the Commission is generally unable to utilize the data to reliably identify rural OCNs experiencing potential rural call completion problems.<sup>36</sup> These data quality issues have also hindered the Commission's ability to use the data as the sole basis for initiating enforcement actions against covered providers.<sup>37</sup>

8. *Enforcement Activity and Complaints.* Before the recording, retention, and reporting rules took effect in the spring of 2015,<sup>38</sup> the Enforcement Bureau completed investigations of the rural call routing practices and performance of several long-distance voice service providers and entered into four consent decrees addressing rural call completion problems.<sup>39</sup> The Bureau entered into another such consent decree in May 2016.<sup>40</sup> These consent decrees included significant commitments by these providers to improve their call completion practices going forward by among other things, monitoring the performance of intermediate providers<sup>41</sup> and developing internal procedures and policies to ensure the timely investigation of evidence of potential rural call completion problems.<sup>42</sup> Notably, in its 2015 Consent Decree, Verizon agreed to use a form of safe harbor routing to rural incumbent LEC destinations during a three-year compliance period, which is scheduled to expire in January 2018.<sup>43</sup> The Commission has also established dedicated avenues for rural consumers and carriers to report rural call completion problems and has reminded long-distance providers of their obligations when served with an informal complaint about rural call completion.<sup>44</sup> While the Commission continues to receive rural call completion complaints, from 2015 to 2016, consumer complaints decreased by 57 percent and rural carrier complaints decreased by 45 percent.

9. *Pending Rural Call Completion Legislation.* Congress is currently considering legislation addressing rural call completion. On January 23, 2017, the House of Representatives passed H.R. 460, the Improving Rural Call Quality and Reliability Act of 2017 (hereinafter, the 2017 RCC

<sup>33</sup> See *id.* at 10-13, paras. 24-29.

<sup>34</sup> See *id.* at 13-14, paras. 30-32.

<sup>35</sup> See *id.* at 15-16, paras. 33-35.

<sup>36</sup> See *id.* at 16-17, para. 38.

<sup>37</sup> See *id.*

<sup>38</sup> 2015 *Data Recording Public Notice*, 30 FCC Rcd at 2059.

<sup>39</sup> See generally *Verizon*, Adopting Order and Consent Decree, 30 FCC Rcd 245 (EB 2015) (*Verizon Consent Decree*); *Matrix Telecom, Inc.*, Order and Consent Decree, 29 FCC Rcd 5709 (EB 2014) (*Matrix Consent Decree*); *Windstream Corp.*, Order and Consent Decree, 29 FCC Rcd 1646 (EB 2014) (*Windstream Consent Decree*); *Level 3 Commc'ns., LLC*, Order and Consent Decree, 28 FCC Rcd 2274 (EB 2013) (*Level 3 Consent Decree*).

<sup>40</sup> *inContact, Inc.*, Order and Consent Decree, 31 FCC Rcd 4329 (2016) (*inContact Consent Decree*).

<sup>41</sup> See, e.g., *Verizon Consent Decree*, 30 FCC Rcd at 253, para. 18; *Matrix Consent Decree*, 29 FCC Rcd at 5716, para. 17; *Level 3 Consent Decree*, 28 FCC Rcd at 2280, para. 16.

<sup>42</sup> *inContact Consent Decree*, 31 FCC Rcd at 4336, para. 19.

<sup>43</sup> See *Verizon Consent Decree*, 30 FCC Rcd at 255, para. 18(a)[5].

<sup>44</sup> See generally *FCC Enforcement Advisory: Rural Call Completion*, Public Notice, 28 FCC Rcd 10347 (EB 2013) (2013 *RCC Enforcement Advisory*).

Act).<sup>45</sup> A companion bill, S. 96, has also been introduced in the Senate.<sup>46</sup> If enacted, the 2017 RCC Act would instruct the Commission to establish a registry of and service quality standards for intermediate providers.<sup>47</sup>

### III. DISCUSSION

10. We believe that rural call completion is a continuing problem and that continued Commission focus on the issue is warranted. We continue to receive rural call completion complaints from consumers as well as rural carriers. At the same time, the declining *rate* of rural call completion complaints to the Commission suggests that problems may be partially abating, and the ongoing transition to bill-and-keep will continue to reduce the incentive structure that contributes to rural call completion problems. We seek comment on this view, including on the prevalence and scope of rural call completion problems today. Regardless of commenters' views, we strongly encourage them to submit specific examples and data. Additionally, we continue to believe that a key reason for rural call completion problems is that calls to rural areas are often handled by multiple intermediate providers in the call path.<sup>48</sup> We seek comment on this view. Further, we seek comment on how the transition to bill-and-keep affects the need for Commission action in this area.

#### A. New Rural Call Completion Requirements for Covered Providers

11. We propose 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. We seek detailed comment below on this proposal and how best to implement it.

12. We believe that our proposal is an improvement upon our existing recording, retention, and reporting rules, and we seek comment on this view. Based on the *2017 RCC Data Report*, we question the ongoing utility of the current data collection requirements. We also recognize that any data collection imposes meaningful ongoing costs. We anticipate that our new proposed rules, when compared to the existing data collection, will be more effective and less burdensome. In particular, we believe that requiring covered providers to actively monitor and address unacceptable performance by their intermediate providers on routes to individual rural destinations—rather than requiring covered providers to submit data to the Commission that may mask call routing failures weeks or months after those failures occur—will help address potential rural call completion issues more directly and more quickly than our existing rules. At the same time, we believe that our proposal, which is consistent with existing industry best practices, will impose limited burdens on covered providers. We seek comment on these views and the need to establish new rural call completion rules for covered providers generally.<sup>49</sup>

13. For purposes of any new rules, we propose to retain our existing definition of “covered provider” in Section 64.2101 of our rules,<sup>50</sup> and we seek comment on this proposal. We also seek comment generally on the form that any new covered provider requirements should take as well as on the proposal discussed below. In addition, we seek comment on any possible alternative approaches to new rules for covered providers. For the proposal below and any potential alternative, we seek comment on its effectiveness in ensuring call completion to rural areas, its costs and benefits, and its impact on smaller providers.

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<sup>45</sup> Improving Rural Call Quality and Reliability Act of 2017, H.R. 460, 115th Cong. (2017) (2017 RCC Act).

<sup>46</sup> Improving Rural Call Quality and Reliability Act of 2017, S. 96, 115th Cong. (2017).

<sup>47</sup> See generally H.R. 460; S. 96.

<sup>48</sup> *2013 RCC Order*, 28 FCC Rcd at 16163, para. 17.

<sup>49</sup> We seek detailed comment on three alternative proposals with regard to the existing recording, retention, and reporting rules in Section III.B below.

<sup>50</sup> 47 CFR § 64.2101.



## 1. Covered Provider Monitoring of Performance

14. Based on industry best practices as developed by ATIS<sup>51</sup> as well as on our experience in enforcing rural call completion practices,<sup>52</sup> we propose to require covered providers to monitor the rural call completion performance of their intermediate providers and to hold them accountable for such performance. We seek comment generally on this approach and other additional or alternative approaches to achieving our objectives. We further seek comment on whether our proposal will facilitate the Commission's ability to enforce Sections 201, 202, and 217 of the Act.

15. We recognize that there are multiple different ways to implement our proposal to require covered providers to monitor the rural call completion performance of their intermediate providers and to hold them accountable for such performance. We seek comment on how best to do so. One possible approach, which is reflected in Appendix A, is a rule that, for each intermediate provider with which it contracts as of the effective date of the rule, a covered provider must (1) monitor the intermediate provider's performance in the completion of call attempts to rural incumbent LECs from subscriber lines for which the covered provider makes the initial long-distance call path choice; and (2) based on the results of such monitoring, hold the intermediate provider accountable for such performance, including by removing an intermediate provider from a particular route after sustained inadequate performance. We seek comment on this specific formulation and on potential alternatives. Additionally, we seek comment on whether we should clarify that we would not impose liability on covered providers that make a good-faith effort to comply with any new monitoring requirements and that hold intermediate providers accountable for problems identified through such monitoring.<sup>53</sup>

16. In implementing this proposal, we seek to ensure that covered providers are adequately monitoring the performance of their intermediate providers in the delivery of calls to rural areas while also giving covered providers flexibility in how they do so. Our preference would be to define meaningful, clear outcomes or actions for a covered provider and then allow covered providers flexibility in how they operate their businesses to meet these objectives. Therefore, we seek comment on the necessity and value of a number of possible approaches to implementation. Specifically, we seek comment on the following issues:

- Should we specify performance metrics or other factors that covered providers must meet and/or performance metrics they must use to monitor and assess the call completion performance of their intermediate providers or should we leave this to the discretion of covered providers?

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<sup>51</sup> See, e.g., ATIS, *Intercarrier Call Completion/Call Termination Handbook* § 6.1 (2015), <https://www.atis.org/docstore/product.aspx?id=26780> (ATIS Call Completion Handbook) (explaining that service providers must define acceptable service levels for their intermediate providers, hold them accountable for their performance, and take remedial action for failure to meet performance expectations, including but not limited to temporarily or permanently removing the intermediate provider from the routing path); *id.* § 6.7 (“IXCs need to establish Direct Measures of Quality (DMoQs) for their [intermediate providers] to meet and need to require [intermediate providers] to report on these metrics. IXCs also need to monitor these DMoQs directly.”); *id.* Table 6.1 (listing examples of DMoQs for call completion, including Call Completion Rate, Call Cut-Off Rate, Post Dial Delay, and Post Answer Delay).

<sup>52</sup> See, e.g., *Matrix Consent Decree*, 29 FCC Rcd at 5717, para. 17(f) (providing that if complaints, testing, or data collected “show that an Intermediate Provider has sustained inadequate performance on a particular route, as reasonably determined by the Company, the Company will cease using the Intermediate Provider on that route, provided that other Intermediate Providers offer commercially reasonable options for reaching that location”); *Level 3 Consent Decree*, 28 FCC Rcd at 2281, para. 16(d); *2013 RCC Enforcement Advisory*, 28 FCC Rcd at 10349 (“Providers may satisfy [rural call completion] complaints by . . . permanently moving traffic onto known well-performing routes when either testing or repeated complaints reveal a problem.”).

<sup>53</sup> See Letter from Steve Morris, Vice President & Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 1 (filed July 7, 2017).

- Should we specify the form and frequency of the required monitoring, and if so how? For example, is ongoing automated monitoring sufficient, or should we also require periodic analysis of the resulting data (and if we require the latter, should we specify the frequency of review, such as on a monthly or quarterly basis)?
- Should we, and if so how, clarify the scope of the required monitoring of intermediate providers? For example, if we were to adopt the specific formulation discussed above, should we clarify (1) whether it must be conducted on a rural OCN-by-OCN basis; (2) whether it must be conducted for all call attempts covered by our existing rules or whether sampling should be permitted; (3) whether it should include call attempts to not only rural incumbent LECs but also rural competitive LECs;<sup>54</sup> and (4) whether it should also include call attempts to nonrural incumbent LECs in the aggregate?
- Should we tie the performance monitoring requirement to industry best practices, and if so which best practices? In particular, we note that some covered providers contractually bind their intermediate providers to follow certain industry best practices, which are documented in the ATIS Call Completion Handbook.<sup>55</sup> These practices include (1) prohibiting “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>56</sup> (2) requiring intermediate providers to “crank back” or release a call back to the originating carrier, rather than simply dropping the call, upon failure to find a route;<sup>57</sup> and (3) prohibiting intermediate providers from processing calls so as to “terminate and re-originate” them<sup>58</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 originating provider to the wireless or wireline provider).<sup>59</sup> These best practices have previously been supported by covered providers and rural carriers alike.<sup>60</sup> Should we require covered providers to mandate that the intermediate providers with which they contract follow these or any other industry best practices? Would such a requirement be overly burdensome for those covered providers that do not already contractually bind their intermediate providers to follow these best practices? We also seek comment on the benefits and burdens of such a requirement on smaller providers.
- We seek comment on whether and how we should clarify the circumstances in which a covered provider must hold one of its intermediate providers accountable for its rural call completion performance. For example, if we adopted the specific formulation discussed above, how should we define what constitutes “sustained inadequate performance” by an intermediate provider?

<sup>54</sup> See, e.g., Letter from Michael R. Romano, Sr. Vice President—Policy, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 1 (Jan. 7, 2016) (NTCA Jan. 7, 2016 *Ex Parte*).

<sup>55</sup> ATIS Call Completion Handbook § 6.

<sup>56</sup> *Id.* § 6.3.

<sup>57</sup> *Id.* § 6.4.

<sup>58</sup> *Id.* § 6.6.

<sup>59</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>60</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); Letter from Colin Sandy, Govt. Relations Counsel, NECA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 2 (Oct. 22, 2013); 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), <https://www.fcc.gov/ecfs/filing/60001031878>.



We seek comment on any other potential implementation issues associated with our proposal, including whether we should establish any exceptions to the proposed requirements. For example, are there instances where an exception would be needed for cases in which covered providers cannot remove an underperforming intermediate provider from a particular route because no other intermediate provider is available? In addition, we seek specific comment on the benefits and burdens of our proposal on smaller providers.

17. In addition, we seek comment on any contractual issues raised by our proposed monitoring requirement. Specifically, we propose to require covered providers to monitor the performance of the intermediate providers with which they contract as of the effective date of the requirement. How would existing contracts be affected by this proposal? For example, would removal of an intermediate provider from a particular route for sustained inadequate performance entail a breach of contract or would contractual change of law provisions cover such action? Additionally, is there a subset of intermediate carriers for which our proposal would not require monitoring because that subset contracts only with other intermediate carriers and not covered providers, and if so how does this impact the effectiveness of our proposal?

18. Further, we seek comment on how we can best ensure compliance with our proposed performance monitoring requirements. For example, is a certification or audit requirement needed to ensure compliance? Why or why not? If so, how should such a requirement be implemented (e.g., what should the certification include and how and when should it be filed)?

## 2. Additional or Alternative Proposals

19. We seek comment on any additional or alternative proposals for new rural call completion requirements for covered providers. For instance, should we require covered providers to follow some or all of the ATIS Call Completion Handbook best practices discussed above or any other industry best practices?<sup>61</sup> Additionally, as an alternative to our proposal above, should we require covered providers to meet or exceed one or more numeric rural call completion performance targets or thresholds while giving them flexibility in how they do so? If so, what metric(s) should we use and what target(s) or threshold(s) should we establish? Should we require covered providers to monitor their own rural call completion performance and proactively investigate rural OCNs associated with poor performance (as evidenced by, for example, low call answer or completion rates, or repeated complaints by customers, rural LECs, or others)?<sup>62</sup> Should covered providers be required to retain data on their rural call completion performance monitoring for a specified period of time? Should we require covered providers to certify that they conduct testing of new intermediate providers with whom they contract,<sup>63</sup> and if so, how should that requirement be structured? Should we require covered providers to limit the number of intermediate providers that they utilize in the call path before the call reaches the terminating provider or terminating tandem, and if so, what should that number be?<sup>64</sup> What are the implications of

<sup>61</sup> See, e.g., Letter from Jill Canfield, V.P. Legal & Industry, Assistant General Counsel, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 2-3 (filed July 6, 2017) (NTCA July 6, 2017 *Ex Parte*) (proposing a requirement that covered providers must comply with all of the best practices in the sections of the ATIS Call Completion Handbook regarding management of intermediate providers and trouble reporting and contact directories).

<sup>62</sup> See 2012 *RCC Declaratory Ruling*, 27 FCC Rcd at 1356, para. 12.

<sup>63</sup> See, e.g., ATIS Call Completion Handbook § 6.11 (“Before offering live traffic to an intermediate provider, an IXC should conduct acceptance testing with the intermediate provider to ensure compliance with call processing requirements and DMOs.”); Letter from Matthew Nodine, Asst. Vice President, Regulatory Policy, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, Attachment at 2 (filed July 29, 2016); Petition of Comcast Cable Communications for Limited Waiver, WC Docket No. 13-39, at 6 (filed Sept. 9, 2016).

<sup>64</sup> See NTCA July 6, 2017 *Ex Parte* at 3 (proposing a requirement that all covered providers must “limit the number of intermediate providers [in the call path] to two, consistent with the current Safe Harbor” rule). We seek comment generally on our existing Safe Harbor rule in Section III.C below.

such a requirement on covered providers, intermediate providers, and consumers? Should we require covered providers to establish reasonable processes to timely investigate rural call completion complaints or other evidence of potential rural call completion problems? If such a requirement is necessary, what would be the elements of such processes? Should we 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 should we make that contact information publicly available?<sup>65</sup> For each of these potential requirements and any alternative, we seek comment on its effectiveness in addressing rural call completion problems, its costs and benefits, and its impact on smaller providers.

### 3. Definitions

20. For purposes of any new requirements we adopt for covered providers, we seek comment on how to define relevant terms. As with the definition of “covered provider,” we propose to retain the existing definitions “intermediate provider,” “call attempt,” “long-distance voice service,” “initial long-distance call path choice,” and “affiliate” in Section 64.2101 of the Commission’s rules<sup>66</sup> to the extent that these terms are used in our final rules. We seek comment on this proposal as well as on whether and how we should define any other relevant terms.

21. We seek comment in particular on how we should define “rural” areas for purposes of any new covered provider requirements. Our existing definition of “rural OCN” is based on the statutory definition of “rural telephone company.”<sup>67</sup> Does this definition accurately capture potential call completion problems to areas that should be viewed as “rural”? We seek comment on this issue and any potential alternatives for ensuring that our rules address call completion problems in “rural” areas. Further, if we decide to eliminate our existing recording, retention, and reporting requirements, should we ask NECA to continue publishing a list of rural and nonrural OCNs? Could and should this list be expanded to include rural competitive LECs? We seek comment on this issue and any alternative ways to ensure that covered providers can identify “rural” areas.

### 4. Exemption for Smaller Providers

22. We seek comment on whether smaller providers should be exempted from any new requirements applicable to covered providers. In the *2013 Rural Call Completion Order*, the Commission exempted providers that made the initial long-distance call path choice for 100,000 or fewer domestic retail subscriber lines, counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the provider’s affiliates, from the recording, retention, and reporting requirements.<sup>68</sup> If we adopt new requirements for covered providers, is an exemption for smaller providers necessary? Why or why not? If such an exemption is necessary, should we retain the same exemption contained in our existing rules? If we retain the exemption, we propose to retain the requirement that the 100,000-subscriber-line figure include the total of all of a provider’s business and residential fixed subscriber lines and mobile phones, aggregated over all of the provider’s affiliates.<sup>69</sup> We seek comment on this proposal.

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<sup>65</sup> See, e.g., NECA *et al.* Jan. 16, 2014 Comments at 6 (“Rural carriers must have the ability to work with originating providers to resolve [rural call completion] issues without being bounced from person to person, each with no knowledge of the situation or ability to address it.”); see also *id.* (explaining that, while voluntary industry point-of-contact lists are available, “there is no requirement for originating providers to update the contact information as it changes”).

<sup>66</sup> 47 CFR § 64.2101.

<sup>67</sup> See *id.*

<sup>68</sup> *2013 RCC Order*, 28 FCC Rcd at 16168, para. 27.

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

## 5. Legal Authority

23. We believe that Sections 201(b) and 202(a) of the Act<sup>70</sup> provide sufficient legal authority for our proposed requirements for covered providers. Practices that lead to rural call completion problems may violate the prohibition against unjust and unreasonable practices in Sections 201(b), or may violate carriers' duty under Section 202(a) to refrain from unjust or unreasonable discrimination in practices, facilities, or services.<sup>71</sup> In addition, we believe that with respect to carriers, Sections 218, 220(a), and 403 of the Act grant the Commission ample authority to (1) inquire into and keep itself apprised of carriers' business management practices; (2) obtain from carriers full and complete information necessary to enable the Commission to perform the duties for which it was created; and (3) prescribe the form for these records and reports.<sup>72</sup> Furthermore, we believe that Section 217 of the Act gives us authority to hold originating providers responsible for the acts, omissions, or failures of the intermediate providers with which they contract.<sup>73</sup> We seek comment on these views and on any other sources of authority to address rural call completion issues. We seek comment on whether and the extent to which we have authority under Section 217 to hold originating providers responsible for the acts, omissions, or failures of intermediate providers in the call path other than those in a direct contracting relationship with the originating provider.

24. We believe the proposed requirements will help facilitate rural call completion and thereby ensure that all Americans in rural and nonrural areas receive the benefits of interconnection under Section 251(a) of the Act.<sup>74</sup> As the Commission explained in the *2013 RCC Order*, Section 201(b) "explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies," including matters covered by Section 251(a).<sup>75</sup> As was the case with our recording, retention, and reporting rules, we believe we have authority to adopt covered provider requirements that would apply to not only interstate but also intrastate long-distance call attempts.<sup>76</sup> As was the case with our recording, retention, and reporting rules, we also believe we have ancillary authority to apply the proposed requirements to covered providers that are VoIP service providers and that are not otherwise subject to our direct authority under the Act.<sup>77</sup> In particular, we believe that requiring providers of VoIP service to comply with the proposed rules is "reasonably ancillary to the effective performance of the Commission's various responsibilities" under Sections 201(b), 202(a), and 251(a)(1).<sup>78</sup> We seek comment on this analysis and any additional sources of possible legal authority for our proposed covered provider requirements.

### B. Recording, Retention, and Reporting Requirements for Covered Providers

25. Consistent with the Wireline Competition Bureau's recommendations in the *2017 RCC Data Report*,<sup>79</sup> we seek comment on proposals to either modify or eliminate our existing recording,

<sup>70</sup> 47 U.S.C. §§ 201(b), 202(a).

<sup>71</sup> See generally *2012 RCC Declaratory Ruling*.

<sup>72</sup> See 47 U.S.C. §§ 218, 220(a); see also *id.* § 154(i); *id.* § 403.

<sup>73</sup> See *id.* § 217.

<sup>74</sup> *Id.* § 251(a).

<sup>75</sup> See *2013 RCC Order*, 28 FCC Rcd at 16171, para. 33 (quoting *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 380 (1999)).

<sup>76</sup> See *2013 RCC Order*, 28 FCC Rcd at 16171, para. 33.

<sup>77</sup> See *id.* at 16172-74, paras. 35-39.

<sup>78</sup> *Am. Library Ass'n v. FCC*, 406 F.3d 689, 693 (D.C. Cir. 2005) (quoting *United States v. Sw. Cable Co.*, 392 U.S. 157, 178 (1968)).

<sup>79</sup> See *2017 RCC Data Report* at 16-17, paras. 38-41.

retention, and reporting requirements. In adopting those rules in the *2013 RCC Order*, the Commission sought to eliminate the problem of rural call completion by (1) improving our ability to monitor rural call completion problems, and (2) aiding enforcement action in connection with providers' call completion practices as necessary.<sup>80</sup> However, as discussed in the *2017 RCC Data Report*, given the data quality issues associated with the Form 480 data collection, we cannot consistently rely on the data to accurately identify rural areas with potential rural call completion problems.<sup>81</sup> In addition, these data quality issues have hindered our ability to initiate enforcement action against covered providers based solely on the data collected.<sup>82</sup> Therefore, we seek comment on three alternative approaches with regard to our existing rules. We believe that we have authority to adopt each of these or similar approaches, and we seek comment on this view.<sup>83</sup>

26. One potential approach is to retain but modify the recording, retention, and reporting rules. We seek comment on this alternative. If we should adopt this approach, how should we modify the existing requirements in light of the lessons learned in the *2017 RCC Data Report*? Would modifying these requirements be preferable to the alternatives discussed below, and if so, why? For example, would a modified data collection assist covered providers in detecting rural call completion problems and addressing them before they grow? Consistent with the *2017 RCC Data Report*, we seek comment on the following potential modifications: (1) whether and how to revise the call resolution categories specified in our rules (*i.e.*, answered, busy, ring no answer, and unassigned number) to reduce or eliminate the problem of uncategorized calls; (2) whether and how to account for inaccuracies in signaling, which affect call categorization and the resulting call answer rates; (3) whether and how to require covered providers to exclude autodialer traffic, intermediate provider traffic, and/or wholesale traffic from their Form 480 reports; and (4) how to revise the Form 480 filing system to ensure consistency in the form and content of covered providers' filings.<sup>84</sup> In addition, we seek comment on whether our recording, retention, and reporting requirements should cover call attempts to rural competitive LECs in addition to rural incumbent LECs.<sup>85</sup> We also seek comment on other possible modifications to our recording, retention, and reporting requirements. For each of these potential modifications as well as any others that commenters recommend, we seek comment on the extent to which the potential modification would yield high-quality data that would help the Commission and/or covered providers in addressing rural call completion problems as well as the feasibility, costs, and benefits of such modifications and their impact on small providers.

27. A second possible approach is to retain the recording and retention requirement but eliminate the reporting requirement.<sup>86</sup> We seek comment on this alternative and its benefits and drawbacks. If we retain the recording and retention requirement, how, if at all, should we modify those requirements?

28. A third potential approach is to eliminate the recording, retention, and reporting requirements. Would this alternative, which is reflected in Appendix A, be preferable to the other approaches discussed above? For example, in the *2017 RCC Data Report*, the Wireline Competition Bureau found that (1) even if we were to retain and modify our recording, retention, and reporting rules to address the data quality issues discussed in the *Data Report*, it is not clear that the benefits of such

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<sup>80</sup> *2013 RCC Order*, 28 FCC Rcd at 16155, 16164, paras. 2, 19; *2014 RCC Reconsideration Order*, 29 FCC Rcd at 14026-27, para. 1.

<sup>81</sup> See *2017 RCC Data Report* at 16-17, para. 38.

<sup>82</sup> See *id.*

<sup>83</sup> See *2013 RCC Order*, 28 FCC Rcd at 16169-74, paras. 28-39.

<sup>84</sup> See *2017 RCC Data Report* at 17, para. 41.

<sup>85</sup> See, *e.g.*, NTCA Jan. 7, 2016 *Ex Parte* at 1.

<sup>86</sup> See *2017 RCC Data Report* at 17, para. 41.

modifications would outweigh the costs; and (2) the necessary modifications would, at best, enable the Commission to reliably identify areas with potential rural call completion problems weeks or months after those problems have occurred.<sup>87</sup> Do commenters agree with these views? We also seek comment on whether retaining the retention or reporting requirements, individually or together, would result in improved rural call completion performance. We seek comment on these and any other considerations we should take into account in determining whether to eliminate these rules.

### C. Safe Harbor

29. We seek comment generally on how we should proceed with our existing Safe Harbor rule and how any Safe Harbor regime should be structured going forward. Given that problems with routing calls to rural areas often arise when multiple intermediate providers are involved in transmitting a call,<sup>88</sup> we recognize the benefits of creating strong incentives for covered providers to use fewer intermediate providers in the call path and seek comment on the best means to create such incentives. If we were to retain any recording, retention, and reporting rules, should we retain or modify our existing Safe Harbor rule? In asking this question, we note that while the Safe Harbor incentivizes covered providers to adopt positive rural call completion practices, it also effectively prevents the Commission from collecting data from some of the largest covered providers.<sup>89</sup>

30. If we adopt any version of the performance monitoring requirements proposed in Section III.A above, should we reduce the monitoring and certification or other obligations of covered providers that meet certain qualifications? If so, how should we reduce these obligations?

31. In any Safe Harbor regime, should we retain the three qualification requirements of our existing Safe Harbor rule?<sup>90</sup> Those are that (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.<sup>91</sup>

32. If we retain the qualification requirements in our existing Safe Harbor rule, should they be modified or clarified and if so, how? For example, Verizon seeks clarifications that (1) incidental or *de minimis* use of a third intermediate provider during network congestion or outages is not in conflict with the Safe Harbor; and (2) that the Safe Harbor certification applies only to traffic destined for rural incumbent LECs.<sup>92</sup> We seek comment on whether we should make these or any other clarifications or modifications to the Safe Harbor if it is retained.

### D. Other Potential Rules to Address Rural Call Completion

33. We seek comment on any additional measures we should take to address rural call completion problems. For example, should we adopt rules formally codifying our existing prohibitions

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<sup>87</sup> See *id.* at 17, paras. 39-40.

<sup>88</sup> 2013 RCC Order, 28 FCC Rcd at 16163, para. 17.

<sup>89</sup> See 2017 RCC Data Report at 16, para. 36.

<sup>90</sup> 47 CFR § 64.2107(a)(1)-(2).

<sup>91</sup> *Id.*

<sup>92</sup> Letter from Maggie McCreedy, Vice President, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 1 (Feb. 23, 2017) (Verizon Feb. 23, 2017 *Ex Parte*).

on blocking, choking, reducing, or restricting traffic?<sup>93</sup> We seek comment on our legal authority to adopt such rules, including whether there is any basis to adopt such rules for intrastate traffic. We also seek comment on what, if any, exceptions to such rules would need to be established.

34. We also seek comment on whether we should impose any requirements designed to address rural call completion issues on terminating providers or a subset thereof (*e.g.*, rural incumbent LECs). For example, Comcast previously recommended that all rural incumbent LECs be required to activate a test line in each of their end offices that originating and intermediate providers can use to conduct fully automated testing.<sup>94</sup> We seek comment on the benefits and burdens of such a requirement and any other requirements for rural incumbent LECs that we should consider.

#### IV. PROCEDURAL MATTERS

##### A. Ex Parte Rules

35. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>95</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.

##### B. Comment Filing Procedures

36. 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.

<sup>93</sup> See *2013 RCC Order*, 28 FCC Rcd at 16163-64, 16207 paras. 18, 130; *USF/ICC Transformation Order*, 26 FCC Rcd at 17903, 18028-29, paras. 734, 973-974; *2012 Declaratory Ruling*, 27 FCC Rcd at 1355-56, paras. 11-12; *2007 Declaratory Ruling*, 22 FCC Rcd at 11629, para. 1.

<sup>94</sup> Comcast Jan. 15, 2014 Comments at 4-5; see also ATIS Feb. 18, 2014 Reply Comments at 9-10.

<sup>95</sup> 47 CFR §§ 1.1200 *et seq.*



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

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### C. Initial Regulatory Flexibility Analysis

37. Pursuant to the Regulatory Flexibility Act (RFA),<sup>96</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 *Second Further Notice of Proposed Rulemaking*. The text of the IRFA is set forth in Appendix B. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comment on the *Second Further Notice of Proposed Rulemaking*. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Second Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>97</sup>

#### D. Paperwork Reduction Act

38. This document 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>98</sup>

#### E. Contact Person

39. For further information about this 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).

#### V. ORDERING CLAUSES

40. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2, 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, 152, 154(i),

<sup>96</sup> See 5 U.S.C. § 603.

<sup>97</sup> See *id.* § 603(a).

<sup>98</sup> See 44 U.S.C. § 3506(c)(4).

201(b), 202(a), 217, 218, 220(a), 251(a), and 403, that this *Second Further Notice of Proposed Rulemaking* IS ADOPTED.

41. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Second Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Draft Proposed Rules for Comment

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

Subpart V – Rural Call Completion

2. Amend section 64.2101 by removing the definitions of “Operating company number (OCN)” and “Rural OCN,” and adding a definition of “Rural incumbent LEC” to read as follows:

**§ 64.2101 Definitions.**

\* \* \* \* \*

*Rural incumbent LEC.* The term “rural incumbent LEC” means an incumbent LEC that is a rural telephone company, as those terms are defined in § 51.5 of this chapter.

3. Amend section 64.2103 by revising to read as follows:

**§ 64.2103 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 incumbent LECs 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, hold the intermediate provider accountable for such performance, including by removing the intermediate provider from a particular route after sustained inadequate performance.

4. Remove and reserve section 64.2105.

**§ 64.2105 [Removed and Reserved].**

5. Remove and reserve section 64.2107.

**§ 64.2107 [Removed and Reserved].**

6. Remove and reserve section 64.2109.

**§ 64.2109 [Removed and Reserved].**

## APPENDIX B

## Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Second Further Notice of Proposed Rulemaking (Second FNPRM or Second Further Notice)*. 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 *Second FNPRM*. The Commission will send a copy of the *Second FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Second FNPRM* 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. In this *Second FNPRM*, we propose changes to, and seek comment on, our rules to address ongoing problems in the completion of long-distance telephone calls to rural areas. We are committed to ensuring that long-distance calls to *all* Americans—including rural Americans—are completed. Although we have made progress reflected by the reduced number of call completion complaints that we now receive, we can and must do better. 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. 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. In light of the complaints we continue to receive from consumers and rural carriers, we believe that rural call completion problems persist and that continued Commission action is necessary to address such problems. Additionally, we continue to believe that a key reason for rural call completion problems is that calls to rural areas are often handled by multiple intermediate providers in the call path.<sup>4</sup>

3. Although we believe that we should continue to take action to address rural call completion problems, we also question the ongoing utility of our existing recording, retention, and reporting rules. In adopting those rules in the *2013 RCC Order*, the Commission sought to eliminate the problem of rural call completion by (1) improving our ability to monitor rural call completion problems, and (2) aiding enforcement action in connection with providers' call completion practices as necessary.<sup>5</sup> However, as discussed in the *2017 RCC Data Report*, given the data quality issues associated with the Form 480 data collection, we cannot consistently rely on the data to accurately identify rural areas with potential rural call completion problems.<sup>6</sup> In addition, these data quality issues have hindered our ability to initiate enforcement action against covered providers based solely on the data collected.<sup>7</sup> Therefore,

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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> See *Second Further Notice*, para. 10.

<sup>5</sup> *2013 RCC Order*, 28 FCC Rcd at 16155, 16164, paras. 2, 19; *2014 RCC Reconsideration Order*, 29 FCC Rcd at 14026-27, para. 1.

<sup>6</sup> See *2017 RCC Data Report* at 16, para. 38.

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

the *Second Further Notice* proposes three alternatives for proceeding with the Commission's existing recording, retention, and reporting rules. In addition, we propose to require covered providers to monitor the rural call completion performance of their intermediate providers, and to hold those intermediate providers accountable for such performance.

**B. Legal Basis**

4. The legal basis for any action that may be taken pursuant to the *Second FNPRM* is contained in Sections 1, 2, 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, 152, 154(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 403.<sup>8</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 rule revisions, if adopted.<sup>9</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>10</sup> In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.<sup>11</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>12</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>13</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>14</sup> These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.<sup>15</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>16</sup> Nationwide, as of 2007, there were

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<sup>8</sup> If enacted, the Improving Rural Call Quality and Reliability Act of 2017 will provide additional legal basis for adoption of any registration and service quality requirements for intermediate providers. *See* Improving Rural Call Quality and Reliability Act of 2017, H.R. 460, 115th Cong. (2017) (2017 RCC Act); *see also* Improving Rural Call Quality and Reliability Act of 2017, S. 96, 115th Cong. (2017).

<sup>9</sup> *See* 5 U.S.C. § 603(b)(3).

<sup>10</sup> *See id.* § 601(6).

<sup>11</sup> *See id.* § 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>12</sup> *See* 15 U.S.C. § 632.

<sup>13</sup> *See* 5 U.S.C. § 601(3)-(6).

<sup>14</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>15</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>16</sup> 5 U.S.C. § 601(4).

approximately 1,621,215 small organizations.<sup>17</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>18</sup> U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States.<sup>19</sup> We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.”<sup>20</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>21</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>22</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>23</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>24</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>25</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

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<sup>17</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2010).

<sup>18</sup> 5 U.S.C. § 601(5).

<sup>19</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>20</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>21</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>22</sup> See 13 CFR § 120.201, NAICS Code 517110.

<sup>23</sup>

[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ2&prodT ype=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodT ype=table).

<sup>24</sup> 13 CFR § 121.201, NAICS code 517110.

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



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>26</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>27</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>28</sup> Of this total, an estimated 1,006 have 1,500 or fewer employees.<sup>29</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>30</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>31</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>32</sup> Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.<sup>33</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>34</sup> Also, 72 carriers have reported that they are Other Local Service Providers.<sup>35</sup> Of this total, 70 have 1,500 or fewer employees.<sup>36</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>37</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

<sup>26</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>27</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>28</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>29</sup> *Id.*

<sup>30</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>31</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>32</sup> See *Trends in Telephone Service*, at tbl. 5.3.

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

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

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

<sup>36</sup> *Id.*

<sup>37</sup> 5 U.S.C. § 601(3).

scope.<sup>38</sup> We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

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>39</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>40</sup> According to internally developed 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.<sup>42</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>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.

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>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

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<sup>38</sup> Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, Federal Communications Commission (filed May 27, 1999). The Small Business Act contains a definition of “small business concern,” which the RFA incorporates into its own definition of “small business.” 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>39</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>40</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>41</sup> See *Trends in Telephone Service*, at tbl. 5.3.

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

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

<sup>44</sup> 13 CFR § 121.201, 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> <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.

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 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.

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>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 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>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.

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

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

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

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

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

<sup>52</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>53</sup>

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

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

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

<sup>56</sup> 13 CFR § 121.201, NAICS code 517110.

<sup>57</sup> See <http://apps.fcc.gov/cgb/form499/499a.cfm> (last visited May 19, 2017).

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.<sup>59</sup> For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.<sup>60</sup> Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more.<sup>61</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>62</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>63</sup> Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.<sup>64</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>65</sup> The SBA has approved these definitions.<sup>66</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 business size standard for Wireless Telecommunications Carriers (except Satellite).<sup>67</sup> Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.<sup>68</sup> According to Commission data, 413 carriers reported that they were engaged in wireless telephony.<sup>69</sup> Of these, an

<sup>58</sup> NAICS Code 517210. See <https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en/ECN.NAICS2012.517210>.

<sup>59</sup> 13 CFR § 121.201, NAICS code 517210.

<sup>60</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the U.S.: 2012 NAICS Code 517210” (rel. Jan. 8, 2016).

<sup>61</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>62</sup> See <http://wireless.fcc.gov/uls>. 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>63</sup> See Federal Communications Commission, Wireline Competition Bureau, Industry Analysis and Technology Division, Trends in Telephone Service at Table 5.3 (Sept. 2010) (*Trends in Telephone Service*), [https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-301823A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf).

<sup>64</sup> See *id.*

<sup>65</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>66</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>67</sup> 13 CFR § 121.201, NAICS code 517210.

<sup>68</sup> *Id.*

<sup>69</sup> *Trends in Telephone Service*, tbl. 5.3.

estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.<sup>70</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>71</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>72</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>73</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>74</sup> Industry data indicate that there are currently 4,600 active cable systems in the United States.<sup>75</sup> Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard.<sup>76</sup> In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.<sup>77</sup> Current Commission records show 4,600 cable systems nationwide.<sup>78</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>79</sup> Thus, under this standard as well, we estimate that most cable systems are small entities.

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>80</sup> There are approximately 52,403,705 cable video subscribers in the United States today.<sup>81</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

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<sup>70</sup> *Id.*

<sup>71</sup> See <https://www.census.gov/agi-bin/ssd/naics/naicsrch>.

<sup>72</sup> 13 CFR § 121.201; 20116 NAICSs Code 515210.

<sup>73</sup> See

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

<sup>74</sup> 47 CFR § 76.901(e).

<sup>75</sup> August 15, 2015 Report from the Media Bureau based on data contained in the Commission's Cable Operations and Licensing System (COALS). See <http://www.fcc.gov/coals>.

<sup>76</sup> Data obtained from SNL Kagan data base on April 19, 2017.

<sup>77</sup> 47 CFR § 76.901(c).

<sup>78</sup> See March 31, 2013 Broadcast Station Totals Press Release.

<sup>79</sup> See FCC, *Cable Operations and Licensing System (COALS)*, <http://www.fcc.gov/coals> (last visited Oct. 25, 2016).

<sup>80</sup> 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

<sup>81</sup> See SNL KAGAN at <http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx>.

exceed \$250 million in the aggregate.<sup>82</sup> Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.<sup>83</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>84</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.* The “All Other Telecommunications” 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>85</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>86</sup> For this category, U.S. 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>87</sup> Thus a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

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

25. The *Second Further Notice* proposes and seeks comment on rule changes that will affect reporting, recordkeeping, and other compliance requirements. In particular, the *Second Further Notice* proposes three alternatives for proceeding with the Commission’s existing rural call completion recording, retention, and reporting rules for covered providers. One proposal would modify the recording, retention, and reporting requirements. Should the Commission adopt this proposal, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping, or other compliance requirements for covered providers. Another proposal would retain the recording and retention requirements but eliminate the reporting requirement. A third proposal would eliminate the recording, retention, and reporting rules. Should the Commission adopt either of these proposals, we expect such action to reduce reporting, recordkeeping, and other compliance requirements. Specifically, the proposals should have a beneficial reporting, recordkeeping, or compliance impact on small entities because many providers will be subject to fewer such burdens. The *Second Further Notice* also proposes to require covered providers to monitor the rural call completion performance of their intermediate providers, and hold those intermediate providers accountable for such performance.

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

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<sup>82</sup> 47 CFR § 76.901(f) and notes ff. 1, 2, and 3.

<sup>83</sup> See SNL KAGAN at [http://www.snl.com/interactivex/TopCable\\_MSOs.aspx](http://www.snl.com/interactivex/TopCable_MSOs.aspx).

<sup>84</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>85</sup> <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

<sup>86</sup> 13 CFR § 121.201; NAICS Code 517919.

<sup>87</sup>

[http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN\\_2012\\_US\\_51SSSZ4&prodType=table](http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table).



**Significant Alternatives Considered**

26. 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>88</sup>

27. The *Second Further Notice* seeks comment on three alternative proposals for proceeding with the Commission's recording, retention, and reporting requirements for covered providers. With respect to one of the alternatives (i.e., modifying the recording, retention, and reporting requirements), the *Second Further Notice* expressly seeks comment on the impact of such modifications on small providers. We anticipate that two of the alternatives (i.e., retaining the recording and retention requirements but eliminating the reporting requirement, or eliminating the recording, retention, and reporting requirements) would reduce compliance burdens for covered providers, and we seek comment on these alternative proposals. Additionally, the *Second Further Notice* seeks comment on whether smaller providers should be exempt from any new requirements applicable to covered providers and seeks comment on how to proceed with the existing Safe Harbor rule to further help reduce burdens on covered providers. The *Second Further Notice* also seeks comment on how to structure the proposal that covered providers monitor the performance of their intermediate providers so as to minimize burdens for small providers.

28. The *Second Further Notice* 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 *Second Further Notice*, 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 *Second Further Notice*, in reaching its final conclusions and taking action in this proceeding.

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

29. None.

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<sup>88</sup> 5 U.S.C. § 603(c).

**STATEMENT OF  
CHAIRMAN AJIT PAI**

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

For too many rural Americans, a pessimistic truth underlies Carly Rae Jepsen's catchy stanza, "Hey I just met you. And this is crazy. But here's my number. So call me maybe." That's because there have been difficulties completing long-distance telephone calls to rural America. "Maybe" a long-distance call made to a distant town will connect; maybe it won't.

But "maybe" doesn't cut it when it comes to connecting Americans. That's why the FCC is paying close attention to rural call completion. Although complaints on this issue decreased by more than half in 2016, there are still far too many callers experiencing delayed and dropped calls, as well as false ring tones and false busy signals, when calling a rural family member or business. A few weeks ago, I heard about this problem firsthand, and repeatedly, in places like Laurens, Iowa (population 1,258).

With this *Second Further Notice*, we propose rules to require providers under our jurisdiction to actively monitor and promptly address rural call completion problems. We believe that these new rules will be more effective in directly and swiftly addressing call completion issues than our existing regulations.

We'll stay focused on this issue until we can remove the qualifier "maybe" from rural Americans' telecom lexicon. However appealing Carly's crush might have been, even more important are the calls made from a daughter in New York to her Dad in rural Ohio to wish him a happy birthday, or the calls from customers to a Southern e-commerce startup.

Thank you to the FCC's excellent staff for the continued work on this issue. From the Wireline Competition Bureau: David Brody, Jean Ann Collins, Adam Copeland, Alex Espinoza, Daniel Kahn, Kris Monteith, Nirali Patel, Steve Rosenberg, and Dana Zelman. From the Enforcement Bureau: Margaret Dailey and Kalun Lee. And from the Office of General Counsel: Bill Dever, Rick Mallen, and Bill Richardson.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

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

As then Acting Chairwoman, back in 2013, I was proud to adopt the first Report and Order on rural call completion. Today, through the adoption of this item, we build upon that effort which recognized that too many in rural America were having subpar call completion experiences. At the time, I said that “[a]t the core of the FCC’s mission is an obligation to ensure all Americans have access to reliable communications services.” This is as true in 2017, as it was in 2013 — perhaps even more so. Thus, I am pleased to see the Commission carrying forward the work we started over five years ago, because all our talk of building out networks to rural and high-cost areas would be for naught if that network and those services were unreliable.

Today’s item takes another step forward in ensuring reliable telephone service to rural areas. While our 2013 Order addressed the obvious symptoms of failed call completion — delayed calls, false ring tones, or no ring tones at all — and deemed them harmful, we did not know how big the problem was. Thanks to our data collection requirements, we now have a clearer picture. Sunlight, as the saying goes, has been an excellent disinfectant, and I firmly believe that the recordkeeping, retention, and reporting requirements have ensured that at least some covered providers got their houses in order. But while these efforts are noteworthy, our job is not yet done.

That is why I am pleased we are seeking comment on further substantive protections for rural consumers. While many have cleaned up their act, the Wireline Bureau’s report shows that there are several providers whose call completion rates to rural area are still unacceptable. I hope that the rules we ultimately adopt will help stamp out this shortfall once and for all.

I am also pleased that we are looking at cleaning up our data collection, by inviting a broader discussion on revisions, additions, and substitutions to our current rules. Simply removing our reporting requirements would be an invitation to less-than-model carriers to skirt the FCC’s call completion rules, so I look forward to reviewing the record and charting a path forward on improving our recordkeeping, retention and reporting requirements.

Thanks to the Wireline Competition Bureau for your work to ensure that rural America receives robust telephone service.

**STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

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

I was not at the Commission when the agency adopted the original call completion rules, but I commend my colleagues and Commission staff for their work to address this issue. Through these efforts and those of industry, there are far fewer reports of rural call completion issues today. That's not to suggest that there is not some work to do, as filings by rural carrier associations highlight that point. Given the vast improvement in the overall circumstances, it does seem an appropriate time to step back, take stock of our rules, and seek comment on whether changes are appropriate in light of the facts on the ground today.

This Second Further Notice seeks comment on swapping one approach, reporting requirements, for another, requiring covered carriers to police intermediate providers. I do agree that if the current reporting requirements are not yielding useful information, we should consider modifying them or eliminating them altogether.

At the same time, I have some questions and reservations about the potential mandates on covered carriers. As my prior statements make clear, I am generally wary of transforming voluntary industry practices into Commission requirements, and we should be very clear that carriers will not be held strictly liable for honest mistakes or circumstances beyond their control. In addition, I am interested in understanding the costs and benefits of this new approach. At least some carriers have already taken steps to limit the number of intermediate providers and monitor their performance, so perhaps adding this requirement will not prove to be unduly burdensome in the end, assuming we get to that point. In terms of substance, I was not in favor of applying this new structure to one-way VoIP, which the Commission has clearly and rightfully distinguished from interconnected VoIP in other instances, so I am pleased that this provision was removed from the item.

I will vote to approve this item.