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

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

COMMENTS OF TIME WARNER CABLE INC.

Time Warner Cable Inc. ("TWC") submits these comments in response to the Notice of Proposed Rulemaking issued in the above-referenced docket.[1]

INTRODUCTION AND SUMMARY

As a leading provider of competitive voice services, TWC takes the issue of rural call completion very seriously. Indeed, TWC values its ability to exchange voice traffic with all types of carriers, and it has a strong interest in ensuring that calls placed by its subscribers to rural customers (and vice versa) are successfully completed. To that end, TWC is eager to work with rural carriers and other relevant entities to address any problems with the delivery of calls to rural communities. In TWC's experience, such coordination is highly effective in resolving any concerns related to call completion, and TWC commends the Commission for its role in promoting and facilitating cooperation in this area.

Notwithstanding the importance of rural call completion as a policy matter, TWC is skeptical about the need for further mandates such as those described in the NPRM, at least insofar as they pertain to originating providers. The NPRM proposes that providers of

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[1] Notice of Proposed Rulemaking, *Rural Call Completion*, WC Docket No. 13-39, FCC 13-18 (rel. Feb. 7, 2013) ("NPRM"), *available at* 78 Fed. Reg. 21891; *see also* Public Notice, *Wireline Competition Bureau Announces Deadlines for Comments on Rural Call Completion Notice of Proposed Rulemaking, Invites Comment on List of Rural Operating Carrier Numbers*, WC Docket No. 13-39, DA 13-780 (rel. Apr. 18, 2013).

interconnected voice over Internet Protocol ("VoIP") services[2]—in addition to virtually every other participant in the call chain—be required to report call completion rates, retain related records, and comply with other requirements. Imposing such obligations, the NPRM suggests, would "help the Commission monitor originating providers' call-completion performance and ensure that telephone service to rural consumers is as reliable as service to the rest of the country."[3]

As discussed below, the NPRM's proposals sweep far too broadly. Most importantly, there is no evidence that interconnected VoIP providers or other originating providers are responsible for any problems with the delivery of calls to rural customers. Rather, intermediate providers and long-distance carriers are the widely acknowledged cause of those issues. Although TWC's interconnected VoIP services permit its subscribers to make long-distance calls, and although TWC originates long-distance calls on its "last mile" local network, TWC itself does not carry those calls. Rather, TWC contracts with long-distance carriers, who carry and deliver TWC's customers' traffic on TWC's behalf. Accordingly, requiring originating local providers such as TWC to report and retain call completion data is unlikely to advance the Commission's goals in this area effectively.[4]

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[2] The proposed reporting and recordkeeping requirements would apply to "facilities-based originating long-distance voice service providers," and the NPRM defines both "facilities-based providers" and "originating providers" to include interconnected VoIP providers. NPRM, App. A at 18; *see also id.* ¶ 13.

[3] *Id.* ¶ 13.

[4] Instead, the Commission should continue to rely on the process it has established whereby rural carriers reach out directly to the originating local provider, which holds the telephone number from which the rural consumer is experiencing a call completion problem, and allow the providers to resolve any issues immediately. TWC has successfully engaged in multiple resolutions of this type via its carrier-to-carrier resolution process since the Commission established its Rural Call Completion Task Force some twenty months ago.

TWC thus urges the Commission to refrain from subjecting originating providers, including interconnected VoIP providers, to new obligations as the NPRM proposes. Such restraint is particularly appropriate given that the Commission already is pursuing other means of monitoring call completion and enforcing applicable rules—including by adopting new call blocking rules, phasing out access charges, and pursuing high-profile enforcement action to deter future misconduct—that are likely to address existing problems in the near term. Adopting more rules while other pending initiatives are still taking effect would be premature and needlessly burdensome.

In the event the Commission nevertheless determines that new requirements for originating providers are warranted, TWC urges the Commission to modify the proposed rules to ensure that any data collected and reported accurately reflects call completion rates consistent with industry standards, and to explore additional ways of minimizing the burdens of the proposed reporting and recordkeeping requirements, such as those discussed below.

DISCUSSION

I. THERE IS NO DEMONSTRATED NEED TO REQUIRE INTERCONNECTED VOIP PROVIDERS TO REPORT OR RETAIN DATA REGARDING RURAL CALL COMPLETION

The NPRM proposes that the Commission impose reporting and other requirements on a wide array of entities involved in the delivery of voice traffic, but it fails to justify that sweeping scope. Despite positing that problems with respect to rural call completion are "widespread and serious,"[5] the NPRM appropriately attributes those problems to intermediate providers and long-distance carriers, and not originating local providers. Indeed, the NPRM is premised on the proposition that some "intermediate providers offering wholesale call delivery services" are

[5] NPRM ¶ 13.

failing to deliver calls to rural telephone customers.[6] The Commission made the same observation more recently, when it announced its recent consent decree resolving its investigation of Level 3's rural call completion practices, stating: "In general, rural call completion failures appear to be caused primarily by long-distance carriers or intermediate providers attempting to reduce the intercarrier compensation paid to local telephone companies for completing long-distance calls to a rural home or business."[7] And associations representing rural telephone companies likewise have identified intermediate providers as the primary cause of call completion problems.[8]

Critically, neither the NPRM nor any preceding notice has cited evidence that originating local providers such as interconnected VoIP providers are to blame for any failures to deliver calls to rural telephone customers. For instance, when the Commission extended its call blocking rules to providers of interconnected VoIP (and one-way VoIP) services, it did not find that these providers were in fact guilty of such conduct; rather, it merely speculated that they

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6 *Id.* ¶ 1, *see also, e.g.*, *id.* ¶ 2 (stating that completion rates for long-distance calls are frequently poor, "even where overall performance of the intermediate provider appears acceptable"); *id.* ¶ 6 (stating that "many . . . call routing and termination problems can be attributed to intermediate providers").

7 News Release, *Level 3 Agrees to Adopt Rigorous New Call Completion Standards and Provide Rural Call Completion Data, Resolving FCC Investigation*, at 2 (rel. Mar. 12, 2013).

8 *See, e.g.*, Letter from Shirley Bloomfield, Chief Executive Officer, National Telecommunications Cooperative Association, to The Honorable Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90 *et al.*, at 3 (filed Sept. 20, 2011) ("NTCA understands that many of these call routing and termination problems may lie with underlying routing providers selected by those who offer retail long distance services in urban areas. The Commission therefore can and should use a Workshop to seek input and answers from these retail long distance providers *and, most importantly, from the underlying routers they use*.") (emphasis in original).

"could have incentives" to avoid high access charges (directly or indirectly) by blocking calls.[9] And even then, the Commission hypothesized that the VoIP provider would merely be acting at the behest of the long-distance carrier of which it is a wholesale customer.[10] But there is no evidence that interconnected VoIP providers have ever acted on this purported incentive—an incentive that presumably will disappear over time with the Commission's mandated reductions to access charges, as discussed below. To the contrary, the NPRM appears to acknowledge the minimal role that originating local providers have in call completion problems, as it seeks comment "on how to minimize the burden of compliance with [its] proposed rules, particularly for originating providers whose call-routing practices do not appear to cause significant call-completion problems."[11]

Of course, the most effective way to minimize such burdens is to refrain from imposing unnecessary rules in the first place. Accordingly, rather than indiscriminately extending reporting obligations to all providers and then seeking ways to reduce the resulting burdens, the Commission should focus on employing other means at its disposal to investigate and address specific, demonstrated problems, as discussed in the next section.

II. THE COMMISSION HAS SHOWN THAT IT ALREADY CAN ADDRESS CALL COMPLETION PROBLEMS WITHOUT IMPOSING ADDITIONAL REPORTING AND RECORDKEEPING REQUIREMENTS ON ORIGINATING PROVIDERS

Even if there were some evidence that interconnected VoIP providers bear some responsibility for any rural call completion problems, there is no reason to believe that reporting

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9 *Connect America Fund, Report* and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 ¶ 974 (2011) ("*ICC/USF Order*").

10 *Id.* ¶ 974 n.2043 (speculating that a long-distance carrier could try to evade the call-blocking rules applicable to it "by having the blocking performed by" its VoIP provider customer).

11 NPRM ¶ 3.

and other obligations are warranted at this time given the various other steps the Commission already is taking to address the issue. As Chairman Genachowski recently acknowledged in response to a congressional inquiry (just weeks before the NPRM was released), "Commission action in this area is continuing on many fronts," including working with state commissions, increasing coordination with the Alliance for Telecommunications Industry Solutions ("ATIS"), and investigating carrier practices.[12] Many of these activities are described in the NPRM.[13] For instance, in October 2011, the newly formed Rural Call Completion Task Force convened a workshop dedicated to call completion issues, at which participants discussed causes of the problem and potential solutions.[14] And in November 2011, the Commission adopted rules prohibiting interconnected VoIP providers (and providers of one-way VoIP services) from blocking calls.[15] Shortly thereafter, in February 2012, the Wireline Competition Bureau released a declaratory ruling reaffirming that routing practices that impair service to rural areas are unlawful.[16]

In addition, the Commission intended that its intercarrier compensation reforms—specifically, its mandated reductions to access charges—would reduce incentives to disrupt the delivery of calls to rural communities. As access charges are reduced over time, efforts to avoid high access charges by blocking calls should decline correspondingly. Indeed, when those reforms became effective, several Commission officials observed that these access charge

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12 Letter from Julius Genachowski, Chairman, FCC, to The Honorable Robert E. Latta, U.S. House of Representatives (Jan. 24, 2013).

13 *See generally* NPRM ¶¶ 7-12.

14 *See, e.g., id.* ¶ 8.

15 *ICC/USF Order* ¶ 974.

16 *Developing an Unified Intercarrier Compensation Regime*, Declaratory Ruling, 27 FCC Rcd 1351 ¶ 12 (WCB 2012).

reductions "will provide both short and long-term solutions to rural call completion problems."[17] In this regard, it is notable that much of the evidence of call completion problems cited in the NPRM—which, again, pertains primarily to intermediate and long-distance carriers rather than originating providers—predates the phase-down of intercarrier charges that began in July 2012 and thus would not account for the corresponding erosion of the principal factor that gave rise to call completion problems.[18]

Concurrently with these actions, the Commission is engaged in "active investigations" regarding rural call completion practices.[19] In fact, shortly after the NPRM was issued, the Commission announced that it had entered into a consent decree with Level 3 resolving an investigation of Level 3's rural call completion practices.[20] That consent decree demonstrates that the Commission already is able to respond to any problems in this area. Moreover, the substantial payment made by Level 3 pursuant to the consent decree, in addition to the compliance plan to which it must now adhere, is likely to deter future misconduct. And to the extent it does not, the Commission has established several means of reporting any issues, including a web-based complaint intake for consumers and a dedicated email intake for carriers.[21]

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17 *New Year Solutions for Rural Call Completion Problems*, Sharon Gillett & Jamie Barnett, Official FCC Blog, Jan. 5, 2012, http://www.fcc.gov/blog/new-year-solutions-rural-call-completion-problems.

18 *See, e.g.*, NPRM ¶ 4 n.9 (citing reports from between April 2010 and March 2011); *id.* ¶ 5 (citing complaints from between August 2011 and February 2012, and from between March 2012 and September 2012).

19 Letter from Julius Genachowski, Chairman, FCC, to The Honorable Robert E. Latta, U.S. House of Representatives (Jan. 24, 2013).

20 Order, *Level 3 Communications, LLC*, File No. EB-12-IH-0087 (rel. Mar. 12, 2013).

21 NPRM ¶ 11.

Before adopting any further rules, the Commission at a minimum should allow sufficient time to assess the efficacy of these recent and ongoing actions. Indeed, early indications are that the Commission's efforts thus far are having their intended effect. For instance, even before the NPRM was released, Chairman Genachowski acknowledged in response to a congressional inquiry that a recent test "shows that overall completion and quality problems have improved since last year."[22] And some rural associations also have reported some degree of improvement in call completion issues as a result of the Commission's actions.[23] To adopt more rules before the results of these measures are fully known would be premature at best.

To the extent the Commission believes reporting requirements are necessary for it to gauge the effectiveness of its other corrective actions, TWC urges it instead to work collaboratively with industry and other stakeholders in order to encourage the exchange of information and the development of best practices, as it did with the October 2011 workshop.[24] Such cooperative efforts would allow the Commission to remain informed about call completion issues while permitting carriers to address them promptly and efficiently outside of the regulatory process. In fact, such carrier-to-carrier coordination and dialogue likely would offer a

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22 Letter from Julius Genachowski, Chairman, FCC, to The Honorable Robert E. Latta, U.S. House of Representatives (Jan. 24, 2013).

23 *See, e.g.*, Letter from Colin Sandy, Counsel for the National Exchange Carrier Association, *et al.*, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 07-135 *et al.*, at 1 (filed May 21, 2012) ("Our current test shows overall completion and quality problems have improved since our September 2011 test."); Letter from James Bradford Ramsey, Counsel for the National Association of Regulatory Utility Commissioners, to The Honorable Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90 *et al.*, at 1 (filed Sept. 29, 2011) (stating that actions by Commission staff "did result in a few months of improvement").

24 Encouraging rural providers to take an even more active role in resolving their subscribers' call completion issues by themselves contacting the originating providers via the carrier-to-carrier contact information the Commission has required originating providers to make available would also assist with the immediate resolution of any particular issue.

more effective means of identifying and addressing call completion problems than rigid reporting requirements. For example, when a terminating carrier reports to an originating carrier that a call did not complete, the originating carrier can investigate the issue immediately and re-route traffic accordingly (such as by circumventing a technological issue involving an intermediate provider). But reporting such an event to the Commission would not lead to its being remedied as quickly, if at all.[25] Thus, the Commission should not presume that increased reporting and recordkeeping rules will advance its interests in this area.

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD FURTHER RELAX THE PROPOSED RULES TO MINIMIZE BURDENS ON ORIGINATING PROVIDERS

While TWC does not believe that any additional rules regarding call completion are necessary or appropriate for interconnected VoIP providers or other originating local providers, if the Commission nevertheless determines to adopt new requirements, it should modify the proposed reporting and recordkeeping rules to ensure accuracy and minimize compliance burdens.

First, the Commission should expand the definition of the "call answer rate" to account for end user behavior that may incorrectly identify a call as not being completed. As described in the NPRM, that rate would presume that any call that is not answered was not completed.[26] But that clearly is not accurate. Thus, in the event the Commission imposes reporting

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[25] Indeed, through the Request for Information ("RFI") process that the Rural Call Completion Task Force has established, whereby rural carriers or their customers go directly to the Commission rather than the originating provider to ask for assistance with the resolution of call completion issues, the types of issues arising from the originating provider's perspective, if any, that are most often discovered from the immediate investigation of these issues are operational glitches or other non-routine occurrences that are able to be resolved promptly. Such issues, however, would not be apparent or resolvable in any timely fashion as a result of imposing reporting obligations on originating local providers.

[26] NPRM ¶ 20.

requirements on originating providers, it should require that providers report the Network Efficiency Ratio ("NER"), an industry standard measure that accounts not only for answered calls but also instances in which the called party's line is busy, when the line is not answered at all, and terminal rejects—all of which, from the originating local provider's perspective, are completed calls. Because it includes these types of calls, the NER figure offers a more accurate and realistic measure of call completion issues than the call answer rate would.

Second, the Commission should adopt more flexible safe harbors. For instance, the NPRM's first proposed safe harbor would require a provider to certify that a directly connected intermediate provider is restricted by contract to using only one additional intermediate provider in the call path before the call reaches the terminating provider.[27] While it is true that having too many intermediate providers can create some problems, such as post-dial delay, there are instances in which a provider may need to rely on more than one additional intermediate provider—most notably, in times of network congestion, when it may be necessary to route traffic to an alternate provider to ensure that it is completed. The proposed safe harbor thus should allow for the use of additional intermediate providers where circumstances warrant it. Otherwise, providers would only be able to avail themselves of this safe harbor when they contractually agree to an arrangement that could have the ironic consequence of preventing them from remedying certain call completion problems.

Third, the Commission should adopt a complete sunset of the rules for providers with a sound track record of completing calls, and more broadly, the Commission should sunset the rules for all providers within a fixed time—for example, within five years of the rules' effective date, or within the same timeframes applicable to the intercarrier compensation reform transition.

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[27] *Id.* ¶ 33.

Given that access charge reductions should eliminate incentives to create call completion problems, as the Commission has anticipated, there is no sound rationale for extending any mandates beyond the end of the phase-out of access charges.

CONCLUSION

For the foregoing reasons, TWC urges the Commission to refrain from imposing unnecessary obligations on interconnected VoIP providers and other originating providers, and instead to continue pursuing other available—and likely more effective—means of addressing any demonstrated problems in connection with rural call completion. TWC, nevertheless, remains committed to diligently working with the Commission and rural providers to resolve any issues that may arise in the process of completing calls originating from TWC customers to rural telephone companies' subscribers on a case-by-case basis as they arise.

Respectfully submitted,

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