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

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

COMMENTS OF
CBEYOND, EARTHLINK, INTEGRA AND TW TELECOM

Cbeyond Communications, LLC, EarthLink, Inc., Integra Telecom, Inc., and tw telecom inc. (collectively, the "Joint Commenters"), through their undersigned counsel, hereby submit these comments in response to the Commission's Notice of Proposed Rulemaking ("*NPRM*") in the above-captioned proceeding.[1]

As the Commission correctly observes in the *NPRM*, the degradation of long-distance voice traffic destined for parties served by rural local exchange carriers ("LECs") is a serious problem that warrants prompt regulatory attention.[2] The *NPRM* represents an important step toward identifying and addressing the underlying causes of such degradation. The Joint Commenters commend the Commission for its attention to this important issue.

As the Commission studies this problem, it should seek to craft rules that account for the characteristics of the commercial arrangements used by carriers to provide long-distance service. Doing so will both increase the accuracy of data gathered regarding calls bound for parties

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[1] *See Rural Call Completion*, Notice of Proposed Rulemaking, 28 FCC Rcd. 1569 (2013).

[2] *See id*. ¶ 13 ("There is ample evidence that rural call completion problems are widespread and serious."); *see also, e.g.*, *Developing an Unified Intercarrier Compensation Regime*, Declaratory Ruling, 27 FCC Rcd. 1351, ¶ 11 (2012); Comments of Nat'l Ass'n of Regulatory Utility Comm'rs, Docket No. 13-39 at 1-3 (filed May 8, 2013).

served by rural LECs and increase the extent to which carriers and regulators are able to identify and resolve problems that cause service degradation. In this regard, three aspects of the Commission's proposals in the *NPRM* warrant comment.

First, in the *NPRM*, the Commission proposes new reporting and recordkeeping obligations that would apply, in each relevant case, to the "first facilities-based provider that is involved in handling the call."[3] The Commission does not define "facilities-based" in the *NPRM*, except to say that over-the-top VoIP providers would qualify as facilities-based.[4] As a result, it is not clear how the Commission intends to apply this term to situations where a LEC resells long-distance service provided by another carrier. Specifically, where a competitive LEC hands off interexchange calls originated by its customers to a wholesale provider of long-distance services, it is not clear whether the competitive LEC or the wholesale interexchange provider is the "first facilities-based provider involved in handling" the long-distance calls.

The Commission should answer this question by treating the wholesale long-distance provider as the first facilities-based provider. This is because competitive LECs that resell long-distance telephone service usually do not have access to the information regarding long-distance call attempts that is the subject of the reporting and recordkeeping rules proposed in the *NPRM*. Nor is it even clear that competitive LECs would be able to obtain this information from their wholesale long-distance service vendors on a consistent basis. The Joint Commenters have found that they generally have little leverage in negotiating purchase agreements with wholesale providers of interexchange service. It is likely to be quite difficult, perhaps impossible, for competitive LECs to persuade all of their wholesale long-distance providers to voluntarily share

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[3] *See NPRM* ¶ 24.

[4] *See id.* ¶ 17 n.39.

call attempt information with their wholesale customers (a process that would also appear to require waiver of CPNI requirements by the Commission). It would therefore be significantly more efficient and practical to classify wholesale long-distance service providers as the first facilities-based provider involved in handling long-distance calls and to subject such providers to the reporting and recordkeeping rules proposed in the *NPRM*.

Second, in the *NPRM*, the Commission proposes "to require only those originating long-distance providers and other covered providers with more than 100,000 retail long-distance subscribers" to comply with the proposed reporting and recordkeeping rules.[5] The Joint Commenters support the Commission's proposal that relatively small carriers not be subject to the proposed reporting and recordkeeping rules. Excluding smaller carriers avoids imposing costly obligations on the providers least able to absorb such costs without seriously compromising the Commission's proposed data retention and reporting regime. Moreover, the Joint Commenters support the Commission's specific proposal that carriers with 100,000 or fewer retail long-distance subscribers be excluded from application of the rules. However, defining the exclusion threshold based solely on the number of retail long-distance subscribers served by a carrier would exclude firms that provide only or primarily wholesale long-distance service. This does not make sense since, as explained, wholesale providers are often in the best (or only) position to access, record, and store the information on call attempts sought by the Commission.

Accordingly, in addition to defining a wholesale provider as the "first facilities-based provider involved in handling" a long-distance call handed off by a LEC, the Commission should modify its small carrier exclusion threshold criteria so as not to exclude large wholesale

[5] *See id.* ¶ 31.

providers. It can do so by requiring a carrier to comply with the proposed reporting and recordkeeping rules if the carrier provides service, either directly through a retail relationship or indirectly by providing wholesale service to a provider of retail service, to a total of more than 100,000 direct and indirect long-distance subscribers.

Third, while the reporting and recordkeeping rules proposed in the *NPRM* are sensible components of a comprehensive regime for addressing rural call completion problems, the Commission does not address the equally important process for inter-carrier reporting and troubleshooting. As the Commission has recognized, many of the causes of service degradation arise from the failure of intermediate providers to deliver calls to terminating rural LECs.[6] When this occurs, it is often impossible for originating carriers to determine why a particular call was not completed. Again, this is because providers often do not collect and retain the information needed to perform the required analysis.[7] The reporting and retention proposals in the *NPRM* may help to ameliorate this particular problem, especially if wholesale providers are brought within the scope of the rules as proposed herein. But reducing the incidence of call completion problems generally will only occur if providers are able to effectively communicate with each other to identify and resolve issues as they arise.

At the Commission's request, ATIS published a detailed handbook regarding issues associated with call completion and termination.[8] Section 6.1 of this handbook sets forth a sound

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[6] *See id.* ¶ 6.

[7] *See id.* ¶ 16.

[8] *See* Alliance for Telecommunications Industry Solutions, Intercarrier Call Completion/Call Termination Handbook, ATIS-0300106 (2012) ("*ATIS Handbook*"); *see also* Letter from Sharon Gillett, Chief, Wireline Competition Bureau, FCC, and James Arden Barnett Jr., Chief, Public Safety & Homeland Security Bureau, FCC, to Thomas Goode, ATIS, DA 11-1985 (Dec. 6, 2011), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-11-1985A1.pdf.

framework for resolving call completion problems and establishing an approach for intercarrier communication regarding these problems.[9] Specifically, the handbook describes processes for handling trouble detection, reporting, and management between long-distance providers and intermediate providers that deliver calls to terminating LECs, and it clarifies the responsibilities of each party in the chain of each process.[10] The Commission should use the framework set forth in Section 6.1 of the ATIS handbook as the departure point for developing rules mandating information exchange and problem resolution between carriers regarding call completion problems. Adoption of such rules will both accelerate resolution of these problems and assist the Commission in identifying those entities that are the source of call failures and degradation.

Respectfully Submitted,

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[9] *See ATIS Handbook* § 6.1.

[10] *Id.*