

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

In the Matter of

Rural Call Completion

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)

WC Docket No. 13-39

**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES**

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providers' performance is not acceptable, and allow such providers a reasonable amount of time to correct the problems. If the problems are not corrected, the long distance provider can and should remove the offending intermediate provider from its routes.⁴

....

To identify intermediate providers with chronic issues in call completion and call quality, the Commission could require all long distance providers to identify the parameters they use to determine whether an intermediate provider's performance is acceptable and keep a record of every time an intermediate provider fails to meet the parameters and the specific issue identified by the long distance provider. ... In addition, the Commission should require long distance providers to file this information at random intervals specified by the Commission for some past period of time. In this way, intermediate providers would not be able to "clean up their act" during a reporting period, as they could if the reporting period is specified in advance.⁵

The American Cable Association ("ACA") states that

the responsibility for fixing any call completion problem should rest with the initial facilities-based LD provider because that carrier benefits most from provision of the service, controls the call flow (routing and completion) of long-distance calls, and has direct access to complete information about whether a call is completed. Moreover, the Commission has authority to impose the necessary regulations on these LD providers.⁶

This establishment of responsibility is appropriate. NASUCA disagrees, however, with ACA's argument that this makes reporting unnecessary.⁷ In the current circumstances, the Commission needs more data; direct action against carriers responsible for call completion failures should be informed by a global examination of the problem.

⁴Blooston Rural Carriers Comments at 3.

⁵Id. at 3-4.

⁶ACA Comments at 3.

⁷Id. at 3-4.

Verizon says the Commission needs more information, but should not mandate reporting.⁸ Verizon criticizes the information the Commission has now,⁹ but does not attempt identify how the information could be gathered.

Consistent with this proposal, NARUC correctly endorses the FCC's view that carriers will not adequately examine the problem or its causes, absent regulatory directives.¹⁰

USTelecom's approach is to identify problems and **then** collect data.¹¹ This misses the point that the problems cannot effectively be identified **without** data.¹² USTelecom states,

Instead of requiring data reporting and retention by all providers, the Commission could require that such information be retained and reported when the volume of substantiated informal complaints received indicates that investigation is warranted and such information is not currently being retained and/or reported. Such reporting should be tied to the enforcement action and not be a continuing obligation.¹³

On a similar note, TWC asserts that

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.

⁸Verizon Comments at 1-2. Verizon says that if the FCC does adopt reporting requirements, they should be broadly scaled back. *Id.* at 8-11.

⁹*Id.* at 4-6.

¹⁰Comments of National Association of Regulatory Utility Commissioners ("NARUC") at 4; see also Comments of the New Jersey Division of Rate Counsel. (Rate Counsel is a member of NASUCA.).

¹¹USTelecom Comments at 5; see also Verizon Comments at 2.

¹²See Sprint Comments at 2.

¹³USTelecom Comments at 7. The Rural Associations point out that the "[c]omplexity of the current web form used to collect consumer complaints has served as a deterrent to some would-be complainants. Comments of National Exchange Carrier Association, et al. ("Rural Associations") at 27-28. The Rural Associations provide suggestions for improving this form. *Id.*

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.¹⁴

It is hard not to be cynical about such obviously-ineffective proposals. The PSCWi

recommends erring on the side of collecting too much information rather than too little. It serves no one's interest to collect too little data now, only leading to a need to have to go back and collect more data in a future period.¹⁵

Depending only on complaints (USTelecom), or on informal resolutions among carriers (TWC) is not appropriate for this issue. The Commission should gather the information and **then do its own investigation**.¹⁶ Only Sprint appears to argue that there really is no substantial problem,¹⁷ but Sprint's concerns about the validity of the available data are best addressed by a broader collection of such data.

Sprint also says that

If end users are unable to complete calls or are otherwise dissatisfied with the quality of the long distance voice service they are receiving, they can readily switch to another service provider. It may be that some subscribers are willing to accept a lower quality of service in exchange for a lower price, and mandating a minimum level of service could eliminate lower cost options that certain end users may prefer.¹⁸

¹⁴TWC Comments at 2, n.4; see also id. at 5-9.

¹⁵PSCWi Comments at 3.

¹⁶As discussed below, the information must be shared with the states, and with consumer advocates, and with the public, so that each and all may take appropriate steps to solve the problem.

¹⁷Sprint Comments at 3-9.

¹⁸Id. at 22.

Given the prevalence of bundling across all technologies, switching to another long distance provider is not as easy as Sprint implies. And there does not seem to be a lot of advertising touting carriers' dismal call completion records in exchange for lower prices.

Verizon supports “less burdensome and more effective alternatives to mandatory data reporting. For example, the Commission could support a meaningful voluntary testing program, which could resolve routing issues in near real-time, potentially before any consumers are impacted.”¹⁹ Again, a cynic might question the value of such voluntary programs; a safe assumption would be that the “bad actors” would not voluntarily participate, leaving victim-consumers unhelpt by Verizon’s “more effective” alternative.

USTelecom states that “[a]ny data requirements adopted in the NPRM should be imposed uniformly across facilities-based providers that originate calls which are terminated on rural LECs with high terminating access rates.”²⁰ NASUCA agrees with the uniformity principle, but because the cause of rural call completion failures is not definitively or exclusively high access charges, the data net needs to be cast wider.

USTelecom itself notes that “if the majority of rural call completion problems are due to access arbitrage, the problem should be vastly reduced as the USF/ICC Transformation Order is implemented and terminating per-minute switched access and reciprocal compensation rates are phased down.”²¹ Yet that is a big “if,” as USTelecom acknowledges.²² NASUCA agrees with

¹⁹Verizon Comments at 2.

²⁰USTelecom Comments at 8.

²¹Id. at 4-5 (emphasis added).

²²Id. at 5-6.

USTelecom that the problem must be addressed in the near term,²³ but we doubt that — given the uncertainty as to cause — data reporting can be rapidly eliminated as ICC charges come down.²⁴

Verizon states that it “reviews call records to identify destinations with call answer rates substantially below the norm and will investigate and remediate, if appropriate.”²⁵ A cynic might say, “Good for them!” Verizon gives no indications of what its “norm” is, what “substantially below the norm” means, or what have been the results of its investigations and remediations “where appropriate....”

Vonage, as an “over-the-top” (“OTT”) voice provider²⁶ describes its recent process improvements:

Our team’s initial efforts using Scorecard combined with the Commission’s OCN data have resulted in a 9% improvement in call completion performance across 65% of the rural calling footprint. We are confident that Scorecard system will allow us to not just drive improvements in call completion/call quality for rural carriers but also for the overall domestic and international markets which will enhance customer satisfaction and reduce any customer churn.²⁷

Vonage is to be commended for this improvement, but one is forced to wonder what the call completion failure base was from which the improvement was calculated. And what about the other 35% of the “rural calling footprint”?

The problem is substantial. The cause(s) of the problem are not clear. But the need for action is clear.

²³Id. at 5.

²⁴Id.

²⁵Verizon Comments at 3; see also AT&T Comments at 3.

²⁶Which have to report under the proposed rules. See NPRM, ¶ 17, n.39.

²⁷Vonage Comments at 1-2.

II. NASUCA SUPPORTS THE NARUC PROPOSALS

NARUC filed early comments, on April 25. NARUC proposes that

[t]he FCC should take additional measures, including: 1) requiring the industry to track, record, and report the reasons for call completion failure; 2) requiring the industry to provide a timed message alerting the caller that their call is being routed; 3) requiring call path entities to register with the FCC; 4) creating a database for a Single Point of Contact (SPOC) for all call path entities; 5) eliminating safe harbors regarding collection and retention of call completion failure data; and 6) requiring the reporting of industry standard metrics. In addition, the FCC should not unilaterally establish permissible call-completion comparison thresholds (ratios) for rural areas for either defining safe harbor provisions or determining enforcement action without forming a factual basis which supports such thresholds. Finally, the FCC should specifically acknowledge that State commissions have and retain sufficient authority to deal with call completion issues under independent State law.²⁸

Some of NARUC's proposals (e.g., #s 1 and 5, safe harbors, and, especially, state authority) are the same as those expressed in NASUCA's initial comments.²⁹ The other proposals make sense and should be adopted.³⁰

III. IS THIS A WIRELINE PROBLEM OR A WIRELESS PROBLEM, OR BOTH?

None of the reviewed comments showed that wireless customers do not suffer from call completion failures. The wireless carriers' comments do not support claims of their immunity

²⁸NARUC Comments at 4.

²⁹See, e.g., NASUCA Comments at 4-9.

³⁰See also NARUC Comments at 14-16. NARUC's proposals are supported by individual state commissions from California, Idaho, Indiana, Iowa, Michigan, Minnesota, Montana, Nebraska, New York, Ohio, Pennsylvania, South Dakota, Vermont, and West Virginia, in joint comments.

from the problem.³¹

IV. CALL COMPLETION FAILURE IS AN INTRASTATE AS WELL AS AN INTERSTATE PROBLEM, AND MUST BE DEALT WITH BY THE STATE COMMISSIONS AS WELL AS THE FCC.

Of the comments reviewed, only CenturyLink takes the position that the FCC's power and responsibility on this crucial issue may be limited to fixing the problem for interstate calls.

To the contrary, most of the comments implicitly acknowledge that this is an interstate **and** intrastate problem. E.g.,

The FCC should require originating providers to submit direct contact information for a responsible individual in their organization who can field calls from downstream carriers who experience call completion issues. To date, voluntary participation by originating carriers on a national carrier contact list has had mixed and limited success.³²

The FCC should do what it can to address this problem, without preempting any state action to address the problem. The FCC should also do what it can to endorse such state action.

V. IS THIS A PROBLEM JUST FOR CUSTOMERS OF RURAL CARRIERS, OR ALSO FOR RURAL CUSTOMERS OF ALL CARRIERS?

None of the reviewed comments demonstrate that this is exclusively a rural carrier problem, i.e., that neither urban customers nor rural customers of non-rural carriers suffer from call completion failures. Intelliquent asserts that this is both a rural and a non-rural problem.³³

³¹See, e.g., CTIA – The Wireless Association™ Comments at 6.

³²Rural Associations Comments at iii. Frontier asserts that the problem will go away this July, when interstate and intrastate access charges become equal. Frontier Comments at 4. Again, this assumes “facts not in evidence”: that access charges are the primary cause of the call completion failure problem.

³³Intelliquent Comments at 1-2.

Regardless, the concept that customers of rural carriers should receive call completion at a systemically lower rate than some other group of customers should be anathema in the absence of a technologically- or economically-driven lawful explanation.

The Independents, like NASUCA, urge the Commission to return to the 99.999% call completion standard of a less-technologically-sophisticated era.³⁴ As they state,

Regardless of the metric used to compare rural and non-rural areas, the Commission should not set an arbitrary delta of lesser call completion rates in rural areas or provide a safe harbor for providers operating within that delta. The Commissioner should strive for nothing less than parity in call quality and completion rates between rural and non-rural areas.³⁵

NASUCA agrees that an arbitrary — not factually cause-based — delta should be rejected.

Indeed, NARUC itself questions the propriety of a differential.³⁶

Iowa Network Service puts it this way:

In focusing solely on the differential in uncompleted calls to rural areas and urban areas/ the Commission's proposals imply that it is acceptable for an intermediary carrier to block calls to rural exchanges so long as it blocks the same percentage of calls to urban exchanges. ... INS urges the Commission to adopt a new regulation that imposes a federal standard establishing the maximum number of uncompleted calls to a local exchange that is acceptable during a single month.³⁷

NASUCA agrees. The standard should be uniform, rural and non-rural, and require almost all calls to be completed.

³⁴Rural Associations Comments at ii.

³⁵Id.

³⁶NARUC Comments at 8-9; see also ANP Comments at 10.

³⁷INS Comments at 10.

VI. THE INCREASE IN CALL COMPLETION FAILURE COINCIDES WITH THE RISE OF VOIP AND INVOLVES VOIP PROVIDERS; SOLUTIONS TO CALL COMPLETION FAILURE MUST ADDRESS VOIP PROVIDERS.

As USTelecom notes, “The National Exchange Carrier Association’s April 2012 call completion study revealed that a particularly high proportion of calls originating as nomadic VoIP were failing to be completed.”³⁸ It hardly follows, however, as TWC appears to suggest,³⁹ that **fixed** VoIP calls have been free of the difficulty or that fixed VoIP carriers bear no responsibility for addressing the problem. On the contrary, as observed in NASUCA’s initial comments, the incompleteness rate for fixed VoIP, although lower than the dismal incompleteness rate for nomadic VoIP, is higher than the incompleteness rate for both wireline and wireless.⁴⁰

TWC seeks broadly to absolve fixed VoIP carriers of responsibility for the problem, and in particular of responsibility for the actions of the downstream providers that the fixed VoIP carriers use to complete their long distance calls. “Critically,” it argues, the Commission has cited no evidence “that originating local providers such as interconnected VoIP providers are to blame for any failures to deliver calls to rural telephone customers.”⁴¹ The argument is flawed for two reasons.

³⁸USTelecom Comments at 8.

³⁹See TWC Comments at 3-5

⁴⁰NASUCA Comments at 11 and 15, citing NECA, “Rural Call Completion Issues Update,” ver. NASUCA.1 (2012), Slide 12.

⁴¹TWC Comments at 2.

First, interconnected VoIP carriers do not always act in the capacity of an originating “local” provider. They often act as—or at least hold themselves out as—originating *long distance* providers.⁴² The NPRM recognizes as much.⁴³

Second, as the Commission has also recognized,⁴⁴ what is critical is the establishment of responsibility for call completion on the part of the originating long distance provider. Indeed, as NASUCA previously observed, the central issue is in many ways the need for an affirmative rule providing that a long distance carrier is responsible for completing the call when it uses other carriers to do so. Such a rule is probably the only way to avoid the perpetual blame-shifting going on in this debate.⁴⁵

CenturyLink notes that “[t]he use of intermediate providers by long distance providers predates the rise of the current call completion issue.”⁴⁶ This reinforces NASUCA’s point that there is a causal relationship between the growth of IP and the current call completion failure problem.

⁴²TWC’s website describes a “Home Phone” offering as follows: “Home Phone is a multi-featured, residential phone service available from Time Warner Cable. Home Phone service is as easy to use as your existing phone service from your traditional phone company. Plus, you get all the benefits of Home Phone service, which include unlimited local, in-state and long distance calling throughout the United States, Canada and Puerto Rico – all for one simple monthly price as low as \$29.95.” See <http://www.timewarnercable.com/en/residential-home/support/faqs/faqs-phone/generalque/what-is-home-phone.html>.

⁴³NPRM, ¶ 13.

⁴⁴*Developing an Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, and *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Declaratory Ruling, 27 F.C.C.R. 1351, 2012 WL 387736 (FCC 2012) (“if an underlying provider is blocking, choking, or otherwise restricting traffic, employing other unjust or unreasonable practices in violation of section 201, engaging in unjust or unreasonable discrimination in violation of section 202, or otherwise not complying with the Act or Commission rules, the carrier using that underlying provider to deliver traffic is liable for those actions if the underlying provider is an agent or other person acting for or employed by the carrier”).

⁴⁵NASUCA Comments at 15-16.

⁴⁶CenturyLink Comments at i-ii.

From the VoIP side:

VON opposes any mandate that Voice over Internet Protocol (“VoIP”) providers collect data or file reports with the Commission concerning their customers’ long distance calls made to rural telephone numbers. The Commission has not established statutory authority to impose the requirement on VoIP providers. The NPRM also fails to recognize that VoIP is not the same as traditional telephone service and provides unique challenges for compliance with the proposed ring signaling integrity requirements. Finally, recent Commission actions should prevent future rural call completion problems and give the Commission adequate recourse to address future rural call completion complaints without the need for a burdensome reporting and data collection effort or imposing a call completion requirement that could inhibit technological innovation.⁴⁷

As to VON’s first contention, “[t]he Commission has not established statutory authority to impose the requirement on VoIP providers”), VON’s argument that the Commission has no ancillary authority to ensure that VoIP providers connect calls for their customers⁴⁸ is actually an argument for the proposition asserted by NASUCA and others that VoIP should be classified as a telecommunications service. Then there would be no question about the FCC’s authority in this area being inadequate to protect the public interest.

VON’s second contention (“that VoIP is not the same as traditional telephone service and provides unique challenges for compliance with the proposed ring signaling integrity requirements”)⁴⁹ assumes again, that VoIP providers have no obligation to complete calls,⁵⁰ and that, therefore call signaling requirements should not apply.⁵¹

⁴⁷Comments of the Voice on the Internet Coalition (“VON”) at 1.

⁴⁸Id.

⁴⁹Id.

⁵⁰As implied by VON, id. at 5.

⁵¹Id. at 5-7.

From another perspective, IntelPeer faults the RLECs for difficulties in terminating IP calls.⁵² It should be the primary responsibility of the newer technology to facilitate connections with legacy technologies, not the other way around. VoIP providers hold themselves out as nation-wide providers, so it should not be surprising when consumers rely on that marketing.

VON objects to the FCC defining over-the-top VoIP providers as facilities-based for these rules.⁵³ VON's argument misses the point: the Commission is defining over-the-top VoIP providers as facilities-based **for these rules**, not more generally.

The key here is that many of the comments show that the causes of call completion failure are not limited to intentional blocking to avoid payment of access charges but also include technological/compatibility problems. NARUC notes the prolonged setup and abandonment of calls, and failure to update routing tables⁵⁴; IntelPeer discusses the long-term investment needed for rural network updating to support IP voice communications⁵⁵; and Sprint notes the issue of technology compatibility and that RLEC switches may not be able to accommodate IP traffic as seamlessly as new switches, as well as possible failure to update routing tables.⁵⁶ Bandwidth asserts that the root cause is non-standard arrangements due to the lack of industry standards, database routing protocols and guidelines for calls originated and transported in IP to TDM.⁵⁷

⁵²IntelPeer Comments at 8.

⁵³VON Comments at 7.

⁵⁴NARUC Comments at 8.

⁵⁵IntelPeer Comments at 3.

⁵⁶Sprint Comments at 2, 11.

⁵⁷Bandwidth Comments at i.

Bandwidth also says that problems due to interaction between TDM and IP technologies are “inevitable during transition,” and that in short, calls may fail due to the interfaces between IP and TDM.⁵⁸) Associated Network Partners, Inc. (“ANP”) charges that the market is dysfunctional.⁵⁹

VII. DISCUSSION⁶⁰

A. Data Reporting, Record Keeping, and Retention

1. Proposed Reporting, Record Keeping, and Retention Requirements

NPRM, ¶ 21

According to TWC, “The NPRM proposes that providers of interconnected voice over Internet Protocol (“VoIP”) services—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.”⁶¹ This is simply not true.⁶² The NPRM’s focus on facilities-based originating providers⁶³ properly places the responsibility on the carrier most directly serving the customer

⁵⁸Id. at 2.

⁵⁹ANP Comments at 12.

⁶⁰Only those NPRM paragraphs for which reply comments are made are listed here; thus the list is less-inclusive than in NASUCA’s initial comments.

⁶¹TWC Comments at 1-2 (emphasis added).

⁶²Verizon’s complaint is that the rule encompasses “all facilities-based long distance providers – including LECs, CLECs, IXCs, interconnected VoIP providers, and CMRS providers...” Verizon Comments at 1. With the addition of the further distinction that the rule covers *originating providers*, Verizon is correct. Yet those are the carriers that are part of the problem. And the fact that the rule covers so many providers speaks mostly to the increasing consolidation of the industry and the “all distance” nature of calling using the newer technologies.

⁶³NPRM, ¶ 21.

whose call may not be completed. Even if it is true that “intermediate providers and long-distance carriers are the widely acknowledged cause of those issues,”⁶⁴ those causing the problem are least likely to accurately report such issues. The Rural Associations point out that

only facilities-based providers with control of the initial long distance routing should be subject to reporting requirements because they are best able to supply the necessary call performance data. The Commission should accordingly make clear that it seeks information specifically from those facilities-based originating providers with the ability to choose the initial call path for purposes of routing long distance calls.⁶⁵

Yet it is not clear — at this point — that carriers “with control of the initial long distance routing” will know all the further routing steps. They should know, but the ultimate purpose of the reporting requirements is to identify where the problem arises. Level 3 points out that

[r]eports from that first carrier may not be adequate for the purpose. Furthermore, the Commission should require record retention and the preparation of monitoring reports by all facilities-based interexchange carriers—not just originating carriers. Unless intermediate interexchange carriers also keep data as to their call completion rates to the various rural carriers, the Commission will be unable to conduct necessary enforcement reviews. For data retention and reporting purposes (but not for performance measures), it is no more burdensome to maintain data on all carriers to whom calls are completed than on just those carriers to whom an IXC completes 100 or more calls.⁶⁶

PSCWi proposes disclosure requirements for intermediate providers,⁶⁷ and Comcast proposes requirements for terminating providers.⁶⁸ These proposals, which increase the information available to the Commission to solve the problem, make sense.

⁶⁴TWC Comments at 2.

⁶⁵Rural Associations Comments at i.

⁶⁶Level 3 Comments at 2; but see Rural Associations Comments.

⁶⁷PSCWi Comments at 5-6, 7-8; see also Intelliquent Comments at 5-7 (including other reasonable proposals on data collection).

⁶⁸Comcast Comments at 12-13.

The Independents propose a different set of filing requirements.⁶⁹ It is not immediately clear in which respects the Independents' proposal exceeds or recedes from the proposal in the NPRM.

TWC requests that the Commission require reporting of the Network Efficiency Rate ("NER") instead of the call completion rate.⁷⁰ TWC describes the NER "as 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."⁷¹ Yet from the calling and called **customers'** perspectives, these calls (i.e., false busy signals) are not completed. Thus it might be helpful to have the NER in addition to call completion, but not **instead** of the FCC's proposal.

COMPTEL proposes that "the Commission should exempt originating providers from further data retention and reporting requirements when the data filed for four consecutive quarters fails to demonstrate that their call routing practices cause significant call completion problems..."⁷² This in effect assumes that four quarters of acceptable performance guarantees perpetual good performance. At most, four quarters of good performance should allow the provider to report only once a year — until the Commission decides that the rural call completion failure problem has been systemically solved.⁷³

⁶⁹Independents Comments at ii.

⁷⁰TWC Comments at 10; see also Comcast Comments at 9-10, Rural Associations Comments at ii.

⁷¹TWC Comments at 10.

⁷²COMPTEL Comments at 9.

⁷³See IntelePeer Comments at 2-3.

Verizon proposes severe limitations on record retention and reporting requirements.⁷⁴ Perhaps such limitations could be considered after an initial investigative period, but they should not be considered while the Commission assesses the true scope of the call completion failure problem.⁷⁵ The only commenter trying to actually show costs of the FCC's proposals is ACA, which provides a very rough estimate from one of its small members.⁷⁶ NARUC proposes an initial monthly reporting requirement for nine months or three quarters, followed by safe harbors

[i]f the data for average quarterly data shows no statistically significant difference for three consecutive quarters between urban and rural call answer rates, the FCC can allow that long distance provider to certify its processes are effective in addressing rural call termination issues and apply the proposed safe harbor provisions.⁷⁷

NASUCA supports this concept, but questions whether three quarters are sufficient to determine a lack of a problem. In addition, subsequent reporting may be needed to ensure that carriers do not fall back in performance. As the Blooston Rural Carriers note,

[I]t is the Blooston Rural Carriers' understanding that some intermediate providers may improve their performance once notified by the long distance provider, only to have performance issues arise again in the future. This tracks with the experience of rural local exchange carriers (LECs) that see call completion rates improve after an investigation into a complaint or customer service inquiry to a long distance provider, but then see problems in call completion and call quality return some time later. Even after the Commission's settlement of its rural call completion investigation of Level 3 Communications, LLC, it is the Blooston

⁷⁴Verizon Comments at 2-3; see also AT&T Comments at 2.

⁷⁵As noted in NASUCA's initial comments (at 4), the scope of the problem (inter- vs. intrastate, rural vs. nonrural, VoIP vs. TDM) is not really known at this juncture.

⁷⁶ACA Comments at 9. In the past, many such carrier estimates of the costs of reporting have been found to be inflated.

⁷⁷NARUC Comments at 7.

Rural Carriers' understanding that problems continue with at least one of its underlying carriers.⁷⁸

On the other hand, the Independents support a monthly “data exchange.”⁷⁹ This might be effective, but may be more burdensome to implement than reporting.

Comcast asserts that the “company-specific, detailed traffic data to be filed **clearly** are commercially sensitive and are not otherwise available to the public or Comcast’s competitive rivals.”⁸⁰ The matter is hardly clear: As NASUCA explained, this information must be, to the greatest extent, public, not filed as proprietary.⁸¹ Comcast has a long way to go before justifying a “blanket” confidentiality rule for this data.⁸²

Hypercube proposes adoption of prophylactic measures before broad reporting requirements are put in place.⁸³ This assumes that its proposed measures will “do the trick”; in the absence of assurance on that score — and in order to identify the actual source(s) of the problem — reporting is necessary. Similarly, Associated Network Partners (“ANP”) states,

A global minimum acceptable call termination threshold coupled with exception based reporting would dramatically cut down on the amount of data that would have to be captured, compiled, reported and stored by carriers and then managed, reviewed and analyzed by the Commission. The principal objective here is to insure that calls are flowing and being completed consistently and on an unencumbered basis throughout the public switched network. A single specific

⁷⁸Blooston Rural Carrier Comments at 3.

⁷⁹Independents Comments at ii; see also Vonage Comments at 2.

⁸⁰Comcast Corporation (“Comcast”) Comments at 5 (emphasis added).

⁸¹See NASUCA Comments at 17-18.

⁸²Comcast Comments at 5; see also CenturyLink Comments at 12.

⁸³Hypercube Comments at i-ii.

threshold with exception reporting will provide the Commission with all the data it needs to assume that objective is being achieved.⁸⁴

ANP's intentions are good, but at this point it seems likely that determining the proper threshold would hardly be easy — although the 99.999% discussed above would likely be a benefit.

CenturyLink asserts that “[c]ontrolled call completion testing that is **voluntary**, inclusive of all stakeholders, and transparent and open in its planning and execution will better inform the FCC about the rural call completion issue....”⁸⁵ than reporting. It is difficult to see how a “voluntary” program could possibly be “inclusive of all stakeholders.” Mandatory reporting will allow the FCC and states to find and then focus on the areas where the problem lies,

NPRM, ¶¶ 27-30

The PSCWi argues against the exclusion of toll-free (“8XX”) numbers, because of the technical nature of those calls and because it has seen call completion failure problems with such numbers.⁸⁶ Both are excellent reasons, and are consistent with NASUCA’s position.⁸⁷

Proposed Limitations on Application of Reporting and Retention Rules

NPRM, ¶ 31

USTelecom states, with regard to the proposed exclusion of data reporting from originating long-distance providers with fewer than 100,000 retail long-distance customers:

Such an exemption will lessen the burden of compliance on smaller service providers, which are often resource-constrained. At the same time, it will not

⁸⁴ANP Comments at 7.

⁸⁵CenturyLink Comments at i (emphasis added).

⁸⁶PSCWi Comments at 3-4.

⁸⁷NASUCA Comments at 21.

prevent the Commission from gaining a substantial amount of data that should reflect an accurate picture of call-routing practices across the country.⁸⁸

NASUCA agrees that the exclusion will lessen smaller providers' burdens. But as stated in NASUCA's initial comments, the exclusion will **increase** the burden on those carriers' customers.⁸⁹ Similarly, the Independents propose that "[a]ll service providers, except those LECs that serve a study area with fewer than 10,000 inhabitants, should be required to electronically file this data with the Commission."⁹⁰ This will unreasonably allow the problem to continue for customers of small carriers. Notably, Verizon — a very large carrier — opposes a minimum carrier size for reporting.⁹¹ And the Colorado Telecommunications Association, et al., support a very low standard.⁹²

Given the possibly grave impacts of call completion failures on consumers, a universal reporting requirement —at least to start with — is the better approach. Limitations on record retention and reporting can come once the problem is better-known.

NPRM, ¶ 32

The adoption of up-front safe harbors was seriously called into question in others' comments. For example, the Rural Associations state:

The Commission should not consider establishing "safe harbors" for reporting carriers until sufficient data has been obtained to assure call completion problems are under control. In any event, certification that intermediate providers use no

⁸⁸USTelecom Comments at 8.

⁸⁹NASUCA Initial Comments at 21-22; see also NARUC Comments at 10.

⁹⁰Independents Comments at ii.

⁹¹Verizon Comments at 15.

⁹² Colorado Telecommunications Association, et al. ("CTA, et al.") Comments at 1.

more than one additional intermediate provider in the call path provides no reasonable basis for a reporting “safe harbor.” This proposed safe harbor is overly broad and provides no guarantee such a limitation would eliminate causes of call failure/quality issues. Reducing data retention obligations for providers who self-certify to call completion thresholds would also undermine the Commission’s ability to track call completion rates while offering little corresponding benefit.⁹³

Many seem more dedicated to saving themselves effort than to solving the problem.⁹⁴

Verizon supports safe harbors such that “achieving a safe harbor would be a realistic option for many providers.”⁹⁵ It is not the number of safe harbor providers within the safe harbor that is relevant here: It is the number of providers with service **that does not harm customers because of call completion failures** that should be considered in adopting any safe harbor.⁹⁶

Level 3 says that safe harbors should be established on a national level, not more granularly.⁹⁷ If safe harbors are adopted, they should be at the most granular level, in order to protect the consumers who would be harmed by lax performance on local levels that would be masked by a national standard.

NPRM, ¶¶ 33-34

None of the comments support the Commission’s first safe harbor (on management of intermediate carriers), except as a way to reduce their burdens. ACA’s proposal⁹⁸ is too close to the FCC’s proposal to be considered. The safe harbor should not be adopted.

⁹³Rural Associations Comments at ii; see also Blooston Rural Carriers Comments at 5.

⁹⁴See, e.g., COMPTTEL Comments at 4-7 supporting safe harbors.

⁹⁵Verizon Comments at 2.

⁹⁶ See CTA, et al. Comments at 9.

⁹⁷Level 3 Comments at 3.

⁹⁸ACA Comments at 3-4.

NPRM, ¶¶ 35-36

Likewise, the support for the second safe harbor focuses on the desire to avoid reporting. It should also not be adopted.⁹⁹

3. Duration of Proposed Reporting and Retention Rules

NPRM, ¶¶ 37-38

The Rural Associations state,

There should be no artificial sunset to rural call completion collection, retention, and reporting rules. Rural call completion problems need to be completely eliminated before the Commission relaxes or eliminates the reporting and recordkeeping requirements needed to support its investigation and enforcement efforts. It is highly unlikely the need for these rules will sunset with the elimination of access charges because the intermediate provider market will still exist.¹⁰⁰

NASUCA agrees, although scaling back reporting can occur before the problem is **completely** eliminated.¹⁰¹

Verizon cites the Commission's desire for prompt action to solve the problem as an argument for a one-year record reporting requirement.¹⁰² This effectively presumes that any quick action the Commission takes will solve the problem. Some skepticism on that point is warranted, however.

⁹⁹Verizon argues that the Commission should not adopt a safe-harbor threshold until after analyzing the data. Verizon Comments at 13. NASUCA agrees, but flatly rejects Verizon's proposals on how the threshold should be generated. Id. at 13-14.

¹⁰⁰Rural Associations Comments at iii. See also CTA, et al. Comments at 9

¹⁰¹Comcast asserts (at 6) that the time period for reporting should be minimal and firmly sunsetted. The Rural Associations' comments put that issue to rest.

¹⁰²Verizon Comments at 14.

B. Proposed Ring Signaling Integrity Requirements

Vonage argues that false ring tones “may simply be used by providers to ensure that the calling party does not hang up before call is answered because the calling party hears a prolonged silence” and that prohibiting false ringing “could have unintended consequences such as having extended silence after the call is placed which could lead to confusion and increased hang-ups by the calling party.”¹⁰³ This is tantamount to an argument that phone users are properly deceived into thinking the called party’s phone is ringing when in fact it is not. Deception is not sound public policy.

Level 3 proposes that

intermediate carriers should also be prohibited from inserting signaling codes that they have no way of knowing are correct, such as returning a busy code when a call does not complete. Without accurate call status signaling by downstream carriers, an upstream IXC may not know when to shift routing to an alternative intermediate provider.¹⁰⁴

This makes sense.¹⁰⁵

VIII. CONCLUSION

NASUCA again expresses gratitude at this opportunity to comment on this issue of direct and grave concern to America’s telecommunications consumers. NASUCA urges the Commission to take prompt and decisive action consistent with these reply comments and NASUCA’s

¹⁰³Vonage Comments at 9-10.

¹⁰⁴Level 3 Comments at 1-2; see also NARUC Comments at 7.

¹⁰⁵See Comcast Comments at 14-15 (supporting FCC call signaling proposals).

initial comments. The literal bottom line is, as stated in the comment of consumer Bart Fitzgerald, “The cost of connecting a call must be less [than] not connecting the call.”¹⁰⁶

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¹⁰⁶ Comments of Bart Fitzgerald at 2.