Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Rural Call Completion	)	WC Docket 13-39
	)	

REPLY COMMENTS OF IOWA NETWORK SERVICES, INC.

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Dated: June 11, 2013

SUMMARY

The comments filed in this proceeding demonstrate that the call quality and uncompleted call problems are severe, dangerous to public health, and ruinous to rural employment and economic growth. A strong Commission response is urgently required in order to avoid dire economic and human injury.

The Commission should reject attempts by upstream providers to shift the blame to terminating local exchange carrier ("LECs"), which are victims, not perpetrators, of the illegal call blocking. Imposing new reporting requirements on rural LECs would achieve nothing but further punish terminating LECs for the transgressions of upstream carriers. Furthermore, mandating direct connections to each rural LEC's end office, as proposed by one least cost router, would be enormously expensive and would create the potential for traffic bottlenecks that INS' Centralized Equal Access network was built to avoid.

The Commission should also avoid granting any exemptions from its rules that will impede the Commission's efforts to prevent further call degradation. In response to CenturyLink's jurisdictional challenge, the final decision in this proceeding should explicitly state that the Commission is exercising its rulemaking authority conferred by Section 201(b) of the Communications Act (the "Act") over both intrastate and interstate calls. The Commission should also exercise its jurisdiction, which it clearly has, and apply the rules adopted in this proceeding to voice-over-internet protocol ("VoIP") providers. The record demonstrates that the routing, capacity, and quality standards of VoIP providers are primary causes of uncompleted calls.

The comments filed by numerous parties demonstrate that the two proposed safe harbors should not be adopted because such widespread exemptions would eliminate access to most of the data necessary to ensure calls are completed and thereby render the new rules completely

inefficacious. For similar reasons, the Commission should deny CenturyLink's request that the Commission exempt all intermediate service providers from the proposed data retention and reporting requirements. Intermediate service providers are engaged in unreasonable call routing that increases post-dialing delay, degrades call quality, and exacerbates call failures.

INS also agrees with other parties that the Commission should adopt new rules that motivate all service providers to work cooperatively together to prevent uncompleted calls. INS also supports NARUC's proposed Commission rule prohibiting false busy signals, inaccurate error messages, and erroneous Caller ID, so long as terminating LECs and access tandem operators are not held liable for relaying false information caused by an upstream service provider. In addition, INS supports NARUC's proposals that would require a database of service provider contact information and establish a new reporting obligation relating to routing table updates.

The Commission should reject the proposals of certain long distance carriers to use data sampling or voluntary testing programs because those proposals fail to ensure that relevant data is available to resolve call completion problems. Furthermore, the Commission should decline to adopt the proposed 100 call per OCN exemption to data reporting because, as demonstrated in the comments filed by INS and numerous other parties, such an exemption would eliminate access to data necessary to prevent the blocking of calls placed to the exchanges of small LECs. Call attempts to rural CLECs should also be included in the reports, despite Level 3's exemption proposal, as intentionally blocking calls to rural CLECs is just as illegal and injurious to the public as blocking calls to rural ILECs. The Commission should also reject Verizon's proposal to retain and report data on an aggregated basis for Verizon's 200 affiliates because such data aggregation would make it impossible to identify the specific Verizon affiliate that is responsible

for failing to take corrective action to prevent call blocking. INS agrees with other parties that requiring additional data in the monthly reports, including the identity of intermediate providers and underlying carriers, will significantly improve the Commission's ability to identify and address the causes of uncompleted calls and degraded call quality.

The call completion data to be reported to the Commission does not satisfy any of the exemptions from public disclosure set forth in FOIA, the Trade Secrets Act, or the Commission's rules, as such data is not commercial or financial in nature and no competitive harm will result from making that data accessible to state regulators and service providers involved in trying to resolve call completion problems.

The new Commission rules to be adopted in this proceeding should not expire until the call completion failure and call quality problems are solved and can be assured not to recur

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Iowa Network Services, Inc. ("INS") hereby submits its reply comments in response to the initial comments filed by other parties in the above-captioned proceeding.

I. The Call Quality and Uncompleted Call Problems Are Severe, Dangerous To Public Health, And Ruinous To Rural Employment And Economic Growth.

Given the seriousness and urgency of the call completion and call quality problems, INS' initial comments urged the Commission to adopt new rules in this proceeding that will ensure a direct and speedy solution.[1] The seriousness of the problem and its nationwide impact is clearly evident from the comments filed by the:

United States Telecom Association,[2]

National Association of Regulatory Utility Commissioners ("NARUC"),[3]

Joint State Commissions[4] comprised of the:

California Public Utilities Commission
Idaho Public Utilities Commission
Indiana Utility Regulatory Commission Iowa Utilities Board
Michigan Public Service Commission Minnesota Public Utilities Commission Montana Public Service Commission
Nebraska Public Service Commission
New York Public Service Commission

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1 INS Comments at 10.

2 United States Telecom Association Comments at 2.

3 National Association of Regulatory Utility Commissioners Comments at 2.

4 Joint State Commissions Comments at 2.

Public Utilities Commission of Ohio
Pennsylvania Public Utility Commission
South Dakota Public Utilities Commission
Vermont Public Service Board
West Virginia Public Service Commission

National Association of State Utility Consumer Advocates,[5]

New Jersey Division of Rate Counsel,[6]

Wisconsin Public Service Commission,[7]

COMPTEL,[8]

Twenty-Nine Independent LECs[9] comprised of the:

Bay Springs Telephone Company, Inc.
Breda Telephone Corp.
BTC, Inc.
Cooperative Telephone Company
Crockett Telephone Company
Dumont Telephone Company
East Buchanan Telephone Cooperative
Hickory Telephone Company
Modern Cooperative Telephone Company
Moultrie Independent Telephone Company
Mutual Telephone Company of Morning Sun
National Telephone of Alabama, Inc.
Ogden Telephone Company
Olin Telephone Company, Inc.
Palmer Mutual Telephone Company
Peoples Telephone Company
Prairie Telephone Co., Inc.
Roanoke Telephone Company
Royal Telephone Company
Sharon Telephone Company
Springville Cooperative Telephone Company
Terril Telephone Company
The Farmers Mutual Telephone Company of Stanton, Iowa
Villisca Farmers Telephone Company

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5 National Association of State Utility Consumer Advocates Comments at 1-2.

6 New Jersey Division of Rate Counsel Comments at 3-4.

7 Public Service Commission of Wisconsin Comments at 1-2.

8 COMPTEL Comments at 1.

9 Twenty-Nine Independent LECs Comments at 1-8.

Wellman Cooperative Telephone Association
West Liberty Telephone Company
Westside Independent Telephone Company
West Tennessee Telephone Company, Inc.
WTC Communications, Inc.

Associated Network Partners and Zone Telecom,[10]

American Cable Association,[11]

Rural Associations[12] comprised of:

NECA
NTCA
WTA
ERTA

and State Associations[13] comprised of the:

Colorado Telecommunications Association
Idaho Telecom Alliance
Montana Telecommunications Association
Oklahoma Telephone Association
Oregon Telecommunications Association
Washington Independent Telecommunications Association.

Together, these comments demonstrate that the integrity of our nation's telecommunications network is under attack and that a strong Commission response is urgently required in order to avoid dire economic and human injury.

In stark contrast, self-serving comments filed by least cost routers, long distance service providers, and voice over Internet Protocol ("VoIP") providers make unsubstantiated claims that the uncompleted call problem is not serious and that there is no need for the proposed rules.[14] Such allegations do not deserve serious consideration as they are nothing more than meritless

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[10] Associated Network Partners, Inc. and Zone Telecom, Inc. Comments at 2-4.

[11] American Cable Association Comments at 2.

[12] Rural Associations Comments at 2.

[13] State Associations Comments at 3.

[14] *See e.g.* HyperCube Telecom Comments at 2; Voice on the Net Coalition Comments at 8; Time Warner Cable Comments at 4-5; Sprint Nextel Corporation Comments at 4-9; AT&T Inc. Comments at 2; Verizon Communications Inc. and Verizon Wireless Comments at 2-3.

attempts to increase corporate profits and avoid additional regulation to the detriment of consumers that are unable to complete their calls. In fact, the record established by the initial comments demonstrates that the number of uncompleted calls has gotten worse since the Commission entered into a consent decree with Level 3 on March 12, 2013. According to the survey of local exchange carriers ("LECs") conducted by Associated Network Partners and Zone Telecom, the Level 3 consent decree has not stopped the increase in uncompleted calls.[15] The Rural Associations explain that, since the Level 3 consent decree, other offenders now believe the "coast is clear" to resume their illegal call degradation practices.[16] *See also*, Joint State Commissions Comments at 5, noting that the Level 3 consent decree led to an "uptick in call completion problems," as traffic moved to least cost routers not under investigation by the Commission.

The impact of uncompleted calls is most insidious when public safety and health is endangered. As described in INS' initial comments, the Iowa Utilities Board is investigating numerous instances when hospitals have been unable to communicate with medical clinics.[17] The blocked medical calls under investigation are intrastate. Therefore, it is critical that the Commission's decision in this proceeding respond to CenturyLink's challenge to the Commission's jurisdiction to adopt regulations ensuring the completion of intrastate calls.[18] Specifically, the Commission should make it clear that it is adopting new rules applicable to intrastate calls in order to carry out the provisions of the Communications Act (the "Act"). Section 201(b) of the Act provides that "the Commission may prescribe such rules and

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15 Associated Network Partners, Inc. and Zone Telecom, Inc. Comments at 5.

16 Rural Associations Comments at 4.

17 INS Comments at 16-17; *see also*, Twenty-Nine Independent LECs Comments at 7-8.

18 CenturyLink Comments at 9.

regulations as may be necessary in the public interest to carry out the provisions of this Act." 47 U.S.C. § 201(b). The Supreme Court has construed Section 201(b) as granting the Commission jurisdiction over intrastate matters to which the Act applies. *AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 380 (1999). The rules adopted in this proceeding will help the Commission carry out its mandate in Section 254(b) of the Act to preserve and advance universal service, which is not limited to interstate service. Fundamental to universal service is the ability to complete calls. Section 254(b)(3) requires access for "consumers in all regions of the Nation" to "interexchange services." As INS recommended in its initial comments, the Commission should also adopt in this proceeding, a minimum standard for call quality because the communications quality of calls is often so poor that it is impossible to communicate.[19] Adopting a minimum standard for call quality would help carry out Section 254(b)(1), which states that "quality services should be available" for both intrastate and interstate long distance calls. In addition, through rules that ensure the completion of calls, the Commission will also further Section 254(b)(2), which states that "access to advanced telecommunications and information services should be provided in all regions of the Nation." Furthermore, new Commission rules that resolve the call completion problem will ensure that consumer receive the benefit of interconnection mandated by Section 251(a). Therefore, section 201(b) clearly grants the Commission rulemaking authority as to both intrastate and interstate calls for the purpose of carrying out "the provisions of this Act," which includes Sections 251(a) and 254(b).

The call quality and uncompleted call problems are not only interfering with the public's access to medical facilities, but are also inflicting serious harm on the quality of life and economic development in rural parts of the U.S. By failing to ensure the proper completion of

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[19] INS Comments at 11.

calls to the terminating LECs' customers, upstream service providers have seriously damaged the terminating LECs' relationships with their customers, resulting in severe harm to rural economic development as businesses move out of rural areas or are deterred from moving to rural areas because they will lose revenue if they cannot receive calls from the consumers of their products and services. Frustrated when their calls do not go through, consumers mistakenly blame the terminating LECs for the failure of upstream carriers to properly complete their calls, and erroneously complain about the reliability of the terminating LEC's service.[20] The frustration of business customers is vividly expressed by Central Program, an important business subscriber for the Grand River Mutual Telephone Cooperative, which explains that "in this economic environment and following our layoffs, every customer is very precious. While we fight for existence, to lose customers over a utility that should be as reliable as electricity is painful."[21] Misled into believing that the culprit for the uncompleted calls is the terminating LEC, customers are disconnecting their service with the terminating LECs and moving to competitors, such as cable TV companies or wireless carriers. That is exactly the anticompetitive, unjust outcome suffered by Villisca Farmers Telephone Company of Villisca, Iowa when a DirecTV and DISH satellite TV repair center, that was unable to receive service calls and service order faxes, moved its telephone service to the cable TV company, Mediacom.[22] Furthermore, as the Wisconsin Public Service Commission observed, "business customers often convert to what they perceive as 'more reliable' options, such as cellular," when calls do not complete to terminating LECs.[23] *See also*, comments of the Alliance for Telecommunications Industry Solutions, concluding that

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[20] The New Jersey Division of Rate Counsel Comments at 11; the Rural Associations Comments at 25; the Twenty-Nine Independent LECs Comments at 6.

[21] Central Program Comments at 1.

[22] Twenty-Nine Independent LECs Comments at 6.

[23] Wisconsin Public Service Commission Comments at 2.

"a provider that fails to complete a subscriber's call will risk losing that subscriber."[24] Through their inaction and lack of cooperation, upstream carriers are wrongfully shifting the blame to the terminating LECs, when the networks of the terminating LECs are functioning properly and are not the cause of the call degradation.

The Commission should reject attempts by upstream providers to shift the blame to terminating LECs, which are victims, not perpetrators, of the illegal call blocking. Least cost routers, long distance providers, and VOIP providers erroneously speculate that older switches and network facilities of terminating LECs and a lack of capacity may be the cause of the rural call completion problems.[25] However, as INS demonstrated in detail in its initial comments, INS' Centralized Equal Access network, which includes a 2,700 route mile high-capacity fiber optic network, ensures that more than 100 subtending terminating LECs have access to state-of-the-art network facilities with abundant capacity.[26] Consequently, one least cost router's proposal to rely upon direct connections to each individual terminating LEC's end office would not only be enormously expensive for the industry, but also has the potential for traffic bottlenecks that will exacerbate the uncompleted call problem the Commission is trying to resolve.[27] Furthermore, the Commission should reject proposals to impose additional reporting requirements on terminating LECs which,[28] given the complete absence of any evidence that terminating LECs have engaged in call blocking, would achieve nothing but further punish terminating LECs for the transgressions of upstream carriers.

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[24] Alliance for Telecommunications Industry Solutions Comments at 4.

[25] IntelePeer, Inc. Comments at 8; Sprint Nextel Corporation Comments at 11-12; Verizon Communications Inc. and Verizon Wireless Comments at 5; Level 3 Communications, LLC Comments at 3.

[26] INS Comments at 2-4.

[27] HyperCube Telecom Comments at 6-8.

[28] Intelepeer, Inc. Comments at 8; HyperCube Telecom Comments at 11-12; COMPTEL Comments at 8; Comcast Comments at 12.

II. In This Proceeding, The Commission Should Strengthen Its Enforcement Powers Against Call Degradation And Resist Efforts To Weaken Them.

Numerous parties agree that there is a need for an immediate solution to the call quality and uncompleted call problems, and that the data collection and reporting proposed by the Commission are insufficient.[29] Other parties urge aggressive Commission enforcement of the prohibition on call degradation.[30] As one business subscriber observes: "The FCC has the authority (and I assert the duty) to issue cease-and-desist orders, forfeitures and license revocations as outlined in the Communications Act of 1934. Done in a public way, this will alleviate the problem."[31] In light of the urgent need to resolve this very serious problem, the Commission should strengthen its enforcement powers in this proceeding, so that the Commission can more effectively ensure that all Americans can communicate through completed calls of sufficient call quality.

As INS discussed in its initial comments, the Commission will be able to more effectively exercise its enforcement powers if the Commission adopts minimum federal standards for call completion and call quality in this proceeding.[32] Many other parties agree.[33] Specifically, the National Association of State Utility Consumer Advocates recommends the

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[29] United States Telecom Association Comments at 2-3; National Association of Regulatory Utility Commissioners Comments at 2-3; Joint State Commissions Comments at 2-3; Wisconsin Public Service Commission Reply Comments at 1; the National Association of State Utility Consumer Advocates Comments at 4; New Jersey Division of Rate Counsel Comments at 12; COMPTEL Comments at 1; Twenty-Nine Independent LECs Comments at 8; Rural Associations Comments at 6.

[30] California Public Utilities Commission Comments at 6; New Jersey Division of Rate Counsel Comments at 12.

[31] Central Programs Comments at 1.

[32] INS Comments at 10-11.

[33] Sprint Nextel Corporation Comments at 21; National Association of Regulatory Utility Commissioners Comments at 14; Associated Network Partners, Inc. and Zone Telecom, Inc. Comments at 7; New Jersey Division of Rate Counsel Comments at 7; Twenty-Nine Independent LECs Comments at 8-9; Blooston Rural Carriers Comments at 6.

traditional call completion standard for all networks in both rural and urban areas of 99.999%.[34] The Commission should also avoid granting any exemptions from its rules that will impede the Commission's efforts to prevent further call degradation.

If there is going to be any hope of protecting the integrity of this nation's telecommunications network, the Commission must not exempt from its rules the same bad actors that are currently causing the problem or present a high risk of exacerbating the problem in the future. Just as the Voice on the Net Coalition ("VON") is now challenging in court the application of the call blocking ban to VoIP service providers, it now challenges the Commission's jurisdiction to require VoIP providers to comply with any new rules adopted in this proceeding to prevent call blocking.[35] Clearly, the purpose of these legal challenges is to permit VoIP providers to block the completion of calls. As the Commission persuasively articulated in its court brief, "VON's legal challenge to the call blocking ban amounts to a tacit admission that VON's members wish to preserve their ability to block calls in the future. If VON's members had no intention of blocking calls, VON could not establish that its members were injured by the call blocking ban – a prerequisite to Article III standing."[36] The Commission also explained how its efforts to prevent call blocking would be completely undermined if VoIP providers were allowed to block calls. "The agency explained that, if it did not ban call blocking by VoIP providers, a telecommunications carrier that is barred from blocking calls by section 201 of the Act could circumvent that constraint by partnering with a VoIP provider and asking the VoIP provider to block calls."[37] For the same reasons, the Commission should exercise its

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[34] National Association of State Utility Consumer Advocates Comments at 10.

[35] Voice on the Net Coalition Comments at 1.

[36] Brief of the Federal Respondents at 13-14, *Voice on the Net Coalition, Inc. v. FCC*, D.C. Cir. (No. 11-9900) (Mar. 18, 2013).

[37] *Id.* at 17.

jurisdiction, which it clearly has, and apply the rules adopted in this proceeding to VoIP providers.

INS' initial comments demonstrated in great detail the Commission's statutory jurisdiction to apply the rules adopted here to VoIP providers.[38] If the Commission ultimately decides that VoIP services are telecommunications services, the Commission would have Title II authority to apply the proposed rules to VoIP providers. Accordingly, the National Association of State Utility Consumer Advocates, COMPTEL, and the New Jersey Division of Rate Counsel ask the Commission to confirm in this proceeding that VoIP service is properly classified as a telecommunications service.[39] However, even if the Commission ultimately determines that VoIP services are information services, the Commission has Title I ancillary authority to apply the proposed rules to all VoIP providers. Other parties agree.[40]

VON's challenge to the Commission's ancillary jurisdiction turns on its meritless argument that there is a lack of record evidence demonstrating that the Commission needs call completion data from VoIP providers in order to prevent call blocking by telecommunications carriers.[41] Requiring VoIP providers, whether acting as originating providers or intermediate providers, to report call completion data is essential to the Commission's identification of situations where telecommunications carriers are relying upon VoIP providers to block calls. The Commission also requires such data in order to bring enforcement actions against VoIP providers that violate the call blocking ban applicable to VoIP providers.

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[38] INS Comments at 7-9.

[39] National Association of State Utility Consumer Advocates Comments at 12; COMPTEL Comments at 3; New Jersey Division of Rate Counsel Comments at 11.

[40] Rural Associations Comments at n. 20; National Association of State Utility Consumer Advocates Comments at 3; New Jersey Division of Rate Counsel Comments at 10; COMPTEL Comments at 3.

[41] Voice on the Net Coalition Comments at 5.

The record demonstrates that calls originated by or transported by VoIP providers raise distinct completion problems. The comments filed by COMPTEL and the United States Telecom Association show that a very large percentage of uncompleted calls involve VoIP providers.[42] As Bandwidth.com explains in its initial comments, the main cause for uncompleted calls are VoIP providers that fail to comply with the Local Exchange Routing Guide ("LERG") and interconnection and routing rules that govern the Public Switched Telephone Network ("PSTN").[43] Bandwidth.com describes the use by VoIP providers of limited capacity PRIs, rather than access trunks, to complete long distance calls as an example of an unconventional call completion arrangement that results in blocked or choked calls.[44] Making the problem worse, terminating LECs are often told by the carrier assigned the originating telephone number that the carrier is not responsible because the originated number was assigned to a VoIP provider. Therefore, as a major cause of the call quality and uncompleted call problems, VoIP providers and the carriers that assign numbers to VoIP providers, should not be exempt from the rules adopted in this proceeding.

In addition to VoIP providers, the Commission should also not exempt from the proposed rules any other service providers that are integral to resolution of the problem. The comments filed by numerous parties demonstrate that the two proposed safe harbors should not be adopted because such widespread exemptions would eliminate access to most of the data necessary to ensure calls are completed and thereby render the new rules completely inefficacious.[45] For

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[42] COMPTEL Comment at 3; United States Telecom Association Comments at 8.

[43] Bandwidth.com, Inc. Comments at 2-3.

[44] *Id.* at 9.

[45] National Association of Regulatory Utility Commissioners Comments at 8-11; Joint State Commissions Comments at 2; Associated Network Partners, Inc. and Zone Telecom, Inc. Comments at 10; Rural Associations Comments at 17-19; Twenty-Nine Independent LECs Comments at 11-12; Blooston Rural Carriers Comments at 5-6.

similar reasons, the Commission should deny CenturyLink's request that Commission exempt all intermediate service providers from the proposed data retention and reporting requirements.[46]

INS' initial comments recommended that the Commission apply its new rules to all intermediate service providers, including non-facilities based resellers, regardless of size because multiple intermediate service providers are often involved in the routing of a single call, and data from those intermediate service providers may be the only way to identify the intermediate service provider that is preventing the calls from completing properly.[47] Many other parties agree.[48] Furthermore, a recent investigation by the Missouri Public Service Commission underscores the need to obtain call completion data from intermediate service providers. After an extensive investigation, the Missouri Public Service Commission staff issued a report on March 29, 2013 concluding that the call completion problem is being caused by intermediate providers offering wholesale call delivery services that fail to deliver a significant amount of calls.[49]

Intermediate service providers are engaged in unreasonable call routing that increases post-dialing delay, degrades call quality, and exacerbates call failures. In one example, an actual call from southern Wisconsin to northwest Wisconsin involved so many intermediate providers trying to use the lowest price route that the call was routed to Eastern Europe and then Singapore before being returned to Wisconsin.[50] In another example, numerous intermediate service providers (CenturyLink, Intelepeer, Impact Telecom, Intermetro Communications, Broadvox

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[46] CenturyLink Comments at 14.

[47] INS Comments at 14.

[48] Verizon Communications Inc. and Verizon Wireless Comments at 16; Level 3 Communications, LLC Comments at 4-6; Associated Network Partners, Inc. and Zone Telecom, Inc. Comments at 9; Twenty-Nine Independent LECs Comments at 10.

[49] Missouri Public Service Commission Comments at 2.

[50] Wisconsin Public Service Commission Comments at 7.

Communications) are involved in the routing of short-distance calls placed by a hospital in Iowa that cannot be completed to a medical clinic only 11 miles away.[51] To better stem the chaos that is being wrought by intermediate service providers, INS agrees with other parties that the Commission should require all intermediate service providers to obtain certification from state regulators, and prohibit any upstream provider from routing traffic to an intermediate service provider that lacks such state certification.[52] Furthermore, in addition to call completion data, the Wisconsin Public Service Commission recommends that the FCC require intermediate providers to publicly disclose whether they have implemented software to prevent looping and their maximum acceptable levels of bad packets and bandwidth constriction.[53] INS agrees that requiring intermediate service providers to report such information would aid in identifying the reasons why calls are not being completed.

In this proceeding, the Commission should also eradicate the common practice by upstream service providers of failing to take corrective action concerning uncompleted calls and instead blaming downstream carriers, such as access tandem operators.[54] To help stop one service provider from blaming another service provider for the uncompleted calls, the National Association of State Utility Consumer Advocates recommends that the Commission adopt a new rule explicitly stating that "a long distance company is responsible for completing the call when it uses other carriers."[55] Other parties propose a similar new rule.[56] NARUC and Bandwidth.com also recommend that the Commission require the industry to work together to track the reasons

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51 Twenty-Nine Independent LECs Comments at 8.

52 Associated Network Partners, Inc. and Zone Telecom, Inc. Comments at 13.

53 Wisconsin Public Service Commission Comments at 5.

54 *See e.g.* Verizon Communications Inc. and Verizon Wireless Comments at 5, 11-12; CTIA Comments at 6, 8; AT&T Comments at 4-5.

55 National Association of State Utility Consumer Advocates Comments at 15.

56 Public Service Commission of the State of Missouri Comments at 2; State Associations Comments at 11.

for uncompleted calls that are reported or discovered.[57] Many upstream carriers refuse to even consider trouble tickets provided by terminating LECs, and insist that the calling party submit any complaints. Furthermore, as described in the Rural Associations' comments, terminating LECs are regularly bounced by originating service providers "from one person with no knowledge of the situation to another."[58] In order to motivate all service providers to cooperate in preventing uncompleted calls, INS agrees that the Commission should adopt an explicit rule holding upstream service providers liable for uncompleted calls when the upstream service provider fails to take corrective action and work cooperatively with tandem operators and other downstream service providers to solve the problem.

NARUC proposes a new Commission rule expressly prohibiting any service provider from relaying false busy signals or inaccurate messages indicating that a call cannot be completed.[59] In light of calls to INS' subtending LECs, such as West Liberty Telephone Company, that have not been answered by the called party due to false Caller ID or erroneous calling party name information, the new Commission rule should also prohibit any service provider from causing false Caller ID or calling name information to be routed to the called party. However, terminating LECs and access tandem operators should not be held liable for not preventing false busy signals, inaccurate messages, or erroneous Caller ID caused by an upstream service provider. With that modification, INS supports the Commission's adoption of such a rule.

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[57] National Association of Regulatory Utility Commissioners Comments at 14; Bandwidth.com, Inc. Comments at 8.

[58] Rural Associations Comments at 26.

[59] National Association of Regulatory Utility Commissioners Comments at 7.

NARUC also recommends that the Commission require the creation of a database that would contain a single point of contact for each service provider involved in the call path.[60] Even entities that are not certificated carriers would be required to register. Numerous parties filed comments supporting such a database.[61] Contact lists need to be mandated by the Commission because the voluntary lists currently being used are incomplete and provide little help in trying to resolve uncompleted calls.[62]

NARUC also recommends that the Commission require each service provider to periodically report that its routing tables are updated and accurate.[63] INS agrees with NARUC that it is critical that all service providers appropriately manage their routing tables to ensure that calls are being accurately routed.

III. Requiring The Reporting Of Additional Data Will Significantly Improve The Ability Of The Commission To Identify And Address The Causes Of Uncompleted Calls And Degraded Call Quality.

The Commission should reject the proposals of certain long distance carriers to use data sampling or voluntary testing programs that would deprive both the Commission and other carriers with access to complete monthly call attempt data.[64] Several parties raised legitimate concerns that sample data would fail to ensure that relevant data is available to resolve call completion problems.[65] Furthermore, as explained by CenturyLink and the Rural Associations,

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[60] National Association of Regulatory Utility Commissioners Comments at 15.

[61] *See e.g.*, Joint State Commissions Comments at 2; Rural Associations Comments at 26; Vonage Holddings Corp. Comments at 12.

[62] Rural Associations Comments at 26.

[63] National Association of Regulatory Utility Commissioners Comments at 15.

[64] Verizon Communications Inc. and Verizon Wireless Comments at 7, 9; Sprint Nextel Corporation Comments at 19; Frontier Communications Corporation Comments at 9.

[65] Public Service Commission of the State of Missouri Comments at 4; National Association of State Utility Consumer Advocates Comments at 19; Associated Network Partners, Inc. and Zone Telecom, Inc. Comments at 8.

data sampling would actually increase rather than lessen the burden of data collection and would result in misperceptions as to what the sample data actually shows.[66]

INS' initial comments recommended that the Commission decline to adopt the proposed 100 call per OCN exemption to data reporting because it would eliminate access to data necessary to prevent the blocking of calls placed to the exchanges of small LECs.[67] Several other parties agree.[68] Such a reporting threshold would also not serve any purpose because, as noted by Level 3 and the Rural Associations, it is no more burdensome to maintain data on all carriers to whom calls are completed than on just those LECs to whom long distance carriers complete 100 or more calls.[69] Furthermore, according to CTIA, the proposed threshold would increase the costs of data collection by requiring a separate system to track the threshold.[70] The Alliance for Telecommunications Industry Solutions further elaborates, "with any threshold, carriers will need to collect the data in order to determine whether the threshold is exceeded."[71] More importantly, as confirmed by the New Jersey Division of Rate Counsel, consumers are still harmed regardless of whether the number of uncompleted calls to a specific rural LEC is a small percentage of an originating long distance provider's total traffic.[72]

The Commission should also resist other attempts to dilute the effectiveness of the data to be reported under the new rules. Specifically, the Commission should reject Verizon's proposal to retain and report data on an aggregated basis for all of Verizon's many affiliated IXCs,

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66 CenturyLink Comments at 12; Rural Associations Comments at 13.

67 INS Comments at 13.

68 Rural Associations Comments at 11; State Associations Comments at 6; Twenty-Nine Independent LECs Comments at 11; and Blooston Rural Carriers Comments at 4.

69 Level 3 Communications, LLC Comments at 15; Rural Associations Comments at 10.

70 CTIA Comments at 10.

71 Alliance for Telecommunications Industry Solutions Comments at 5.

72 New Jersey Division of Rate Counsel Comments at 8.

CLECs, ILECs, and wireless carriers.[73] Verizon has more than 200 affiliates.[74] Such data aggregation would make it impossible to identify the specific Verizon affiliate that is responsible for failing to take corrective action to prevent call blocking. Instead, as INS recommended in its initial comments, the Commission should require the monthly reports to separately identify each underlying carrier and intermediate service provider, including each Verizon affiliate.[75] Other parties agree.[76]

To further aid in determining which intermediate service providers are failing to complete calls, Neutral Tandem also recommends that the Commission require the reported data to be broken down by intermediate service provider.[77] Under this proposal, the reporting company would report how many calls it handed to each intermediate service provider, the identity of that intermediate service provider, and whether those calls were completed. In addition, the Blooston Rural Carriers recommend that the Commission 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 (to be filed with the Commission) of every time an intermediate provider fails to meet the parameters and the specific issue identified by the long distance provider.[78] Furthermore, the Missouri Public Service Commission recommends that the reports identify any non-facilities-based reseller that sends traffic to the first facilities-based long distance provider.[79]

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[73] Verizon Communications Inc. and Verizon Wireless Comments at 10.

[74] Intelepeer Comments at 5.

[75] INS Comments at 16.

[76] Public Service Commission of the State of Missouri Comments at 6; National Association of State Utility Consumer Advocates Comments at 16..

[77] Neutral Tandem, Inc., d/b/a Inteliquent Comments at 5.

[78] Blooston Rural Carriers Comments at 3.

[79] Public Service Commission of the State of Missouri Comments at 6.

INS supports the more granular approach proposed by these other parties in order to better facilitate resolution of call completion problems involving multiple service providers.

The Commission should also not exclude the reporting of all data relating to calls placed to rural CLECs, as proposed by Level 3.[80] The only rationale provided by Level 3, that conference calls are sometimes placed to rural CLECs, does not justify intentionally blocking such calls, especially when the rural CLEC has fully complied with the Commission's access stimulation rules. Furthermore, as pointed out by the National Association of State Utility Consumer Advocates, if the VoIP networks are the principal cause of the call completion problems, then completion rates to both rural and non-rural destinations, whether served by CLECs or ILECs, will be impaired.[81] Consequently, call attempts to rural CLEC customers should be included in the data reported to the Commission in order to help protect consumers against unlawful call blocking and call quality degradation.

NARUC, with the support of the Joint State Commissions, proposes that the Commission require the monthly reports to also include the reasons for the call completion failure, the Answer Seizure Ratio ("ASR"), the Network Efficiency Ratio ("NER"), Average Call Duration ("ACD"), and average post dial delay data.[82] INS agrees that service providers should provide the Commission with the data necessary to quickly resolve the call completion problems. As noted by the Rural Associations, a comparison of call answer rates to NER data will help the Commission identify intermediate service providers engaged in false or misleading signaling practices.[83] However, in reviewing NER data, the Commission should not consider calls as

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80 Level 3 Communications, LLC Comments at 13-14.

81 National Association of State Utility Consumer Advocates Comments at 10.

82 National Association of Regulatory Utility Commissioners Comments at 12-13; Joint State Commissions Comments at 2.

83 Rural Associations Comments at 15-16.

completed for cause values such as "user busy", "unallocated number," "ring no answer," or "number changed," because such reporting treatment would mask false busy signals and misleading error messages.

As INS explained in its initial comments, treating the reports as confidential and inaccessible to the rest of the industry will undermine efforts to resolve the call completion problem.[84] Many other parties agree.[85] In seeking to prevent disclosure of its reports, Comcast erroneously alleges that there is a presumption that the call completion reports will be kept confidential by the Commission.[86] However, under the Freedom of Information Act ("FOIA"), the presumption is that the reports will be available for public inspection unless Comcast proves that the reports qualify for a FOIA "exemption," which they do not. As the Supreme Court has made clear, the central purpose of FOIA is "to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny." *Dep't of Air Force v. Rose*, 425 U.S. 352, 361 (1976). Furthermore, because the basic objective behind FOIA is disclosure, not secrecy, any "exemptions" are to be "narrowly construed." *FBI v. Abramson*, 456 U.S. 615, 630 (1982).

Comcast also applies the wrong test for determining when financial or commercial information in the Government's possession is to be treated as confidential under Exemption 4 of FOIA, 5 U.S.C. § 552(a)(4).[87] The test for whether the public should be denied access to reports filed with the Commission is more lenient when information is filed with the Commission voluntarily than when the Commission requires the filing of the information. *Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871, 878 (D.C. Cir. 1992).

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[84] INS Comments at 13.

[85] National Association of State Utility Consumer Advocates Comments at 17-18; Public Service Commission of the State of Missouri Comments at 5; New Jersey Division of Rate Counsel Comments at 9; Rural Associations Comments at 20-21; Twenty-Nine Independent LECs Comments at 10.

[86] Comcast Corporation Comments at 5.

[87] Comcast Corporation Comments at 5.

Comcast mistakenly applies the more lenient test for voluntary submissions given that the reports under consideration in this proceeding will be mandated by new Commission rules. The test for voluntary filings with the Commission is whether the information "would customarily not be released to the public by the person from whom it was obtained." *Id.* However, the proper test for mandatory filings like the call completion reports is whether disclosure of the required reports would "cause substantial harm to the competitive position of the person from whom the information was obtained." *Id.* Furthermore, "as the harm to the private interest (commercial disadvantage) is the only factor weighing against FOIA's presumption of disclosure, that interest must be significant." *Id.*

To qualify for FOIA exemption 4, the information in the call completion reports must in some fashion be commercial or financial in nature, which it is not. The call completion data does not reveal anything about the revenues, expenses, or income of the service provider filing the report or the details of any commercial transaction. The call completion data is distinguishable from the detailed investment and expense data that was involved in the Commission's tariff investigation upon which Windstream relies.[88] Moreover, even if the call completion data is commercial or financial in nature, there will be little, if any, competitive harm from making that information available to the public. Information, like call completion data, that is not constant over time and is affected by many variables, creates minimal risk of competitive harm. *Acumenics Research and Technology v. U.S. Dep't of Justice*, 843 F.2d 800, 808 (4th Cir. 1988). The Trade Secrets Act also does not prevent public access to the call completion reports when, as here, FOIA exemption 4 is not satisfied. *Id.* at 806. The Commission's rules, 47

[88] Windstream Comments at n. 7. In the physical collocation tariff investigation, 14 FCC Rcd 987 (1999), the Commission limited disclosure of the cost support to parties that agreed to a protective order because the investment and expense data would help competitors develop pricing strategies. By contrast, the call completion reports under consideration in this proceeding will not include cost data and will not help competitors develop their prices.

C.F.R. § 0.457(d) also incorporate FOIA exemption 4. As exemption 4 is to be read narrowly, exempting the call completion reports from public inspection would contradict FOIA's strong policy in favor of disclosure. Therefore, the Commission should find that the reports are not exempt from FOIA disclosure and make the reports available for investigating and resolving call completion problems.

INS' initial comments recommended that the Commission refrain from adopting an expiration date for the new rules based on the phase-down of terminating access charges.[89] Numerous other parties agree.[90] The National Association of State Utility Consumer Advocates accurately describes as "shaky" the assumption that the level of terminating rates is the sole cause of the call completion problems.[91] While terminating rates have been declining, the number of uncompleted calls has increased. For example, the implementation of bill-and-keep for CMRS-to-LEC calls and the reduction of intrastate termination rates in several states have not resulted in a reduction in the number of uncompleted calls.[92] As described in the Comments of the Rural Associations and Intelepeer, multiple economic and technical factors other than terminating rates are interfering with the completion of calls to rural areas.[93] If calls are not being completed because VoIP providers are applying less rigorous call completion standards than the rest of the PSTN, then there will continue to be a need for the rules adopted in this proceeding regardless of the level of terminating rates. Therefore, INS agrees with the other

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89 INS Comments at 20.

90 State Associations Comments at 9; Rural Associations Comments at 21-23; Twenty-Nine Independent LECs Comments at 12; National Association of State Utility Consumer Advocates Comments at 25; Alliance for Telecommunications Industry Solutions Comments at 8; New Jersey Division of Rate Counsel Comments at 11; Intelepeer Comments at 3.

91 National Association of State Utility Consumer Advocates Comments at 25.

92 Rural Associations Comments at 22.

93 Intelepeer Comments at 3; Rural Associations Comments at 22.

parties who recommend that "the rules should expire only if the call completion failure problem is solved and can be assured not to recur."[94]

IV. Conclusion.

The factual record established in this proceeding demonstrates that our nation's call quality and uncompleted call problems are serious, as they endanger public safety and undermine economic growth. Therefore, new Commission rules are urgently needed that will significantly improve the Commission's ability to swiftly identify and resolve the causes of uncompleted calls and degraded call quality.

Respectfully submitted,

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Dated: June 11, 2013

[94] National Association of State Utility Consumer Advocates Comments at 25; Alliance for Telecommunications Industry Solutions Comments at 8.