

Safe Harbors. The proposed safe harbors are key to the targeted approach proposed by the Commission.⁴ Thus, the Commission should reject calls to eliminate the proposed safe harbors. The first safe harbor is for carriers that manage relationships with intermediate providers through contractual provisions that ensure that there will be no systemic failures to complete calls to rural areas.⁵ As AT&T explained in its comments, AT&T's experience demonstrates that actively managing carrier relationships through contract and oversight to ensure quality call completion works.⁶ For example, AT&T limits by contract the services provided by call termination suppliers to one additional intermediate provider, which in turn must be bound by contract to the call quality standards required by AT&T.⁷ AT&T provides its customers with high-quality interexchange services and avoids systemic call completion problems by actively managing its vendor relationships.⁸ And if there is an issue, a limited number of intermediate providers allows AT&T to isolate the problem and determine its cause to prevent it from becoming a chronic problem for AT&T's customers and for end users in rural areas.⁹

⁴ See, e.g., USTelecom Comments at 7; Inteliquent Comments at 4, 6.

⁵ See Notice, paras. 33-34.

⁶ See AT&T Comments at 3.

⁷ See Presentation of Penn Pfautz, AT&T, FCC Rural Call Completion Workshop (Oct. 18, 2011), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-310507A1.pdf; Statements of Kim Meola, AT&T & Penn Pfautz, AT&T, Rural Call Completion Workshop video, available at <http://www.fcc.gov/events/rural-call-completion-workshop> (describing AT&T's practice of limiting by contract the services provided by call termination suppliers to one additional intermediate provider, which in turn must be bound by contract to the call quality standards required by AT&T); see also Inteliquent Comments at 4 (stating that "the presence of multiple intermediate carriers with off-net codes in an originating carrier's LCR can lead to call completion and quality problems").

⁸ See Colorado Telecommunications Association *et al.* Comments at 8 ("The State Associations are willing to represent that there are relatively fewer call completion problems when the originating carrier is AT&T.").

⁹ Any final rules adopted here should clarify that where the LEC subtends the tandem of another carrier, the tandem is treated as part of the terminating network and not an "intermediate provider" for purposes of these rules. The tandem in this situation is providing an access service and is not providing interexchange service. See Level 3 Comments at 12-13 (arguing that the Commission should exclude access tandems from the definition of

AT&T holds itself and its vendors to high standards for handling all traffic and the result is an outstanding call-completion record. AT&T takes all complaints about rural call completion seriously and actively investigates each one—regardless of whether the complaint comes from an AT&T customer, a rural LEC, or a rural end user with no relationship with AT&T.¹⁰ Indeed, AT&T’s internal tracking of call completion complaints and voluntary testing in cooperation with rural LECs shows that the vast majority of rural call completion troubles reported to AT&T were not problems related to AT&T service. In the uncommon instances when that was not the case, AT&T has been able to quickly troubleshoot the problem and resolve any technical issues.¹¹ The burden of new recordkeeping and reporting requirements on carriers that already take responsible actions to ensure high-quality call completion for all calls, including those bound for rural areas, would surely outweigh the policy benefits the Commission seeks. The proposed safe harbors allow the Commission to

“intermediate provider”); Wisconsin Commission Comments at 4-5 (explaining that the Commission needs to clarify how the definition of “intermediate provider” would apply to tandems).

¹⁰ AT&T has also been actively involved in development of best practices through ATIS. See “Alliance for Telecommunications Industry Solutions, ATIS Standard on Intercarrier Call Completion/Call Termination Handbook,” ATIS-0300106, available at <<http://www.atis.org/docstore/product.aspx?id=26780>> (rel. Aug. 2012); see also Wisconsin Commission Reply at 2 (“Adding emphasis to and an increased use of already-existing industry methods to track down and remedy call completion difficulties should be pursued.”); Verizon Comments at 6.

¹¹ From February to May of 2013, AT&T received complaints regarding 43 customer numbers from the FCC as an informal complaint; through the rural call completion process set up by the Enforcement Bureau; or directly to AT&T’s rural call completion process. Thirty-one of those complaints were related to interexchange service provided by carriers other than AT&T, four identified specific problems with terminating LEC equipment or an intermediate tandem, one was a problem with customer CPE, and for the remaining seven no trouble was found. In each of the 12 cases related to AT&T interexchange customers, the customer and usually the LEC were provided with contact information for a network professional so any additional problem could be addressed in real time.

narrowly target any new rules, and thus, the Commission should soundly reject calls to eliminate the safe harbors from the final rules.¹²

Scope of the Rules. To the extent the Commission adopts rural call completion rules, it should ensure that the scope of the rules is broad enough to actually achieve the Commission's policy ends.¹³ Resellers—whether or not they are rural ILECs or their affiliates, interconnected VoIP providers¹⁴ or any other provider of interexchange services to their customers—should not be exempt from the rules. All carriers that offer their customers interexchange service should be subject to the rules—and the safe harbors. There is no policy justification to exclude them. Like AT&T—a facilities-based carrier—resellers may protect their customers from unscrupulous call termination practices of their underlying facilities-based providers through contractual provisions and call quality standards that ensure calls are completed. To the extent that resellers satisfy one of the safe harbors, they would be subject to reduced burdens. Each provider would have control over its own regulatory burden by choosing or not choosing to comply with a safe harbor. Indeed, to the extent that their wholesale interexchange providers engage in practices that result in substandard service to rural end users and cause systemic problems with call completion (rural or otherwise), these resellers should be accountable. Moreover, they may be best situated both to identify call quality problems (because they have the relationship with the consumer) and to prevent them

¹² See, e.g., NARUC Comments at 10-11; Bay Springs Telephone Company *et al.* Comments at 10, 12; Iowa Network Services (INS) Comments at 17; NASUCA Reply at 20-21; Associated Network Partners, Inc. and Zone Telecom, Inc. Comments at 10; NECA *et al.* Comments at 16; NASUCA Comments at 22-23.

¹³ See *Notice*, para. 24.

¹⁴ See Time Warner Cable Comments at 2 (arguing that interconnected VoIP providers that contract with long-distance carriers to deliver interexchange traffic should be exempt from the rules).

through contract and oversight of their relationships with their underlying, wholesale providers.¹⁵

Call Metrics. AT&T shares the concerns of commenters that questioned the metrics proposed by the Commission and the thresholds that would provide safe harbor or, alternatively, the benchmarks that would be mandated.¹⁶ The Commission proposes a “call answer rate” metric, also known as Answer/Seizure Ratio (ASR).¹⁷ As the Commission explains, it chose this metric, in part, to address concerns about the reliability of network information (*e.g.*, ringback and busy) returned by intermediate carriers.¹⁸ This metric, however, has serious deficiencies for estimating differences in call completion, both in terms of the sample size that may be needed for establishing a statistically significant difference and in terms of the required assumptions about equivalence of things like ring-no-answer and busy rates between the populations to be compared.¹⁹ These concerns are important because the Commission’s proposed second safe harbor requires average rural/non-rural difference of no more than two percent overall and for 95 percent of OCNs no more than three percent difference.²⁰ In this context, potential rural versus non-rural difference in user behavior (such as use of voicemail, *etc.*), even if modest, might make a difference in whether a carrier

¹⁵ See Inteliquent Comments at 7; CenturyLink Comments at 13.

¹⁶ See, *e.g.*, Time Warner Cable Comments at 9-10; Frontier Comments at 5; Comcast Comments at 7-10; CenturyLink Comments at 16; NECA *et al.* Comments at 14-15.

¹⁷ See Notice, para. 27-30 & n.52.

¹⁸ See Notice, para. 29.

¹⁹ See, *e.g.*, William C. Hardy, “QoS: Measurement and Evaluation of Telecommunications Quality of Service,” at App. C (2001), available at <<http://onlinelibrary.wiley.com/doi/10.1002/0470845910.app3/pdf>>; Mary A. Genalo and Roy D. Hickman, “A Study of Ring/No Answer Numbers in Random Digit Dialing Telephone Surveys,” available at <http://www.amstat.org/sections/srms/proceedings/papers/1988_102.pdf>.

²⁰ See Notice, para. 35.

satisfies the test. Further, given the requirement for collecting data on OCNs with as little as 100 calls, achieving statistical reliability for differences will be unlikely.

The Commission should also reject arguments to impose a mandate for an absolute level of call completion, such as the 99.999 percent level of call completion suggested by some commenters.²¹ These commenters confuse traditional network element (*e.g.*, central office switch) reliability, which is indeed on the order of “5 nines,” with traffic engineering. Accepted network engineering principles provide that normal trunk sizing is for one percent blocking in the busy season, busy hour.²² Even though average call completion across a month may exceed the 99 percent of trunk sizing, it is unlikely to be “5 nines.” And even the 99 percent level for trunk sizing does not account for things like ring-no-answer or busy. Any absolute level adopted by the Commission using the ASR metric would have to be much lower still to account for the shortcomings in that metric (as discussed above).

It is worth noting that the rural call completion issue arose because of reports of catastrophic levels of failure that made some rural customers essentially unreachable by calling parties using certain interexchange carriers. The rural LECs and state commissions are now arguing about an order of magnitude smaller differences—differences that might well be imperceptible to most customers. To the extent the Commission adopts rules here, it should stay focused on addressing the legitimate call completion concerns of rural consumers.

Centralized Equal Access Rings. Finally, in a separate proceeding, the Commission should promptly reexamine the role of Centralized Equal Access (CEA) carriers in the modern marketplace as another step that it could take to curb incentives and ensure quality

²¹ See, *e.g.*, Bay Springs Telephone Company *et al.* Comments at 8, 11; Iowa Network Services (INS) Comments at 9; NASUCA Comments at 10.

²² See Bell Laboratories, ENGINEERING AND OPERATIONS IN THE BELL SYSTEM 175, 184 (2d ed. 1983).

services to rural America. As AT&T noted in its comments, the Commission has already taken effective action to address rural call completion through enforcement of existing legal obligations and by adopting intercarrier compensation reform to address incentives to avoid high terminating access rates to rural, rate-of-return carriers.²³ While AT&T believes that these reforms will significantly address rural call completion problems over the coming years, some issues with the rural intercarrier compensation regime have been unaddressed by these reforms and thus will persist well beyond the transition to bill-and-keep for rural, terminating rates. For example, one of the most significant remnants of regulation that has long outlived its usefulness and marketplace realities is the remaining obligation to connect to rural carriers in certain states *exclusively* through centralized equal access (CEA) rings.²⁴ These arrangements create perverse incentives for both the LECs attached to the rings and for the CEA providers themselves that lead not only to high access charges—creating strong incentives for carriers to engage in practices that could negatively impact rural call

²³ See AT&T Comments at 1-2 (citing *Notice* at paras., 6, 37; *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, para. 801 (2011) (*USF/ICC Transformation Order*), *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Level 3 Communications, LLC*, EB-12-IH-0087, Order, 28 FCC Rcd 2272 (Enf. Bur. 2013) (adopting consent decree in which Level 3 agreed, among other things, to make a \$975,000 voluntary contribution to the U.S. Treasury and make additional \$1 million contributions if quarterly benchmarks established in the agreement are missed); FCC, *Level 3 Agrees to Adopt Rigorous New Call Completion Standards and Provide Rural Call Completion Data, Resolving FCC Investigation*, News Release (Mar. 12, 2013)).

²⁴ See *Application of Iowa Network Access Division*, 3 FCC Rcd 1468, para. 21 (1991) (*INS Order*); *Application of South Dakota Network, Inc. and SDCEA, Inc.*, 5 FCC Rcd 6798, para. 24 (1989) (*SDN Order*). In its comments, Iowa Network Services (INS) states that “[b]ecause the CEA network aggregates traffic for many rural telephone lines, communications and information service providers have the choice of reaching thousands of customers in hundreds of rural communities through a single CEA connection.” INS Comments at 2-3. Indeed, interexchange carriers have no choice. The section 214 authorizations granted to both INS and South Dakota Network (SDN) by the FCC provided that the CEA carriers would be the exclusive access point to reaching these rural customers in their respective states. See *INS Order* at para. 21; *SDN Order* at para. 24. Even where traffic volumes justify direct connects to many of these carriers (often based on their traffic-pumping volumes), AT&T’s requests for direct connects have been denied by both rural ILECs and CLECs that cite their exclusive relationship with the relevant CEA carrier. Such an arrangement cannot be justified in today’s competitive marketplace.

completion—but also to arbitrage (*e.g.*, mileage pumping) despite the Commission’s efforts to curtail such practices.²⁵ The days of government-granted monopolies in the communications industry should be long gone. The Commission should take immediate steps to reexamine the conditions of the operating authority granted to these carriers and ensure that they are encompassed within intercarrier compensation reform going forward.

CONCLUSION

For the foregoing reasons, the Commission should ensure that any rules adopted in this proceeding are narrowly tailored and minimally burdensome, particularly for carriers that take responsible steps to ensure reliable service to all called parties.

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June 11, 2013

²⁵ See generally *AT&T v. Alpine Comm. et al.*, EB-12-MD-003, Order on Reconsideration, 27 FCC Rcd 16606 (2012) (holding that *Alpine et al.* violated sections 201(b) and 203 of the Communications Act of 1934, as amended, by engaging in an unlawful mileage pumping scheme).