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

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

FOURTH REPORT AND ORDER

Adopted: March 15, 2019 **Released: March 15, 2019**

By the Commission: Commissioners Rosenworcel and Starks approving in part, concurring in part and issuing separate statements.

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I. INTRODUCTION

1. In 2019, all Americans should have confidence that when a phone call is made to them, they will receive it. Yet, that is not always the case for those living in rural or remote areas of the country. Rural call completion problems persist and they can have significant impacts on quality of life, economic opportunity, and public safety in rural communities. Additional work remains to be done to fix this vexing problem. Today, we take up that charge, furthering the Commission's ongoing efforts to ensure that calls are indeed completed to *all* American consumers and continuing our implementation of

the Improving Rural Call Quality and Reliability Act of 2017 (RCC Act).[1] Specifically, based on the record before us, we adopt service quality standards for intermediate providers that complement the rules we have already established for covered providers. We also sunset our remaining call data recording and retention rules one year after the service quality standards adopted today become effective.

II. BACKGROUND

2. Prior to 2018, the Commission relied on data recording, retention, and reporting rules to address rural call completion issues. These rules, adopted in the 2013 *First RCC Order*, were intended to improve the Commission's ability to monitor the delivery of long-distance calls to rural areas and aid enforcement action with respect to providers' call completion practices.[2] Under these rules, "covered providers"—entities that select the initial long-distance route for a large number of lines—are required to record and retain, for six months, specific information about each call attempt to a rural operating company number (OCN)[3] from subscriber lines for which the providers make the initial long-distance call path choice.[4] In addition, the *First RCC Order* required covered providers to file quarterly reports with the Commission containing aggregated information.[5]

3. In the April 2018 *Second RCC Order*, the Commission reoriented its existing rural call completion rules to better reflect strategies that have worked to reduce rural call completion problems while at the same time reducing the overall burden of the rules on providers.[6] First, the Commission adopted a new rule requiring covered providers to monitor the performance of the "intermediate providers" to which they hand off calls.[7] The Commission held that the monitoring rule entails both prospective monitoring of intermediate provider performance to prevent problems and retrospective investigation of any problems that arise.[8] At the same time, the Commission gave covered providers flexibility in determining the monitoring practices best suited to their individual networks and declined to mandate compliance with specific standards or best practices as part of the monitoring requirement.[9]

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[1] Improving Rural Call Quality and Reliability Act of 2017, Pub. L. No. 115-129, 132 Stat 329 (2018) (RCC Act).

[2] *Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16164, para. 19 (*First RCC Order*).

[3] The term "OCN" means a four-place alphanumeric code that uniquely identifies a local exchange carrier. 47 CFR § 64.2101. The term "rural OCN" means an operating company number that uniquely identifies an incumbent LEC that is a rural telephone company as that term is defined in section 51.5 of the Commission's rules. *Id.*; *see also id.* § 51.5 (defining "rural telephone company"); 47 U.S.C. § 153(44) (same).

[4] *First RCC Order*, 28 FCC Rcd at 16182-84, paras. 61-65; 47 CFR § 64.2103.

[5] *First RCC Order*, 28 FCC Rcd at 16182-84, paras 65-67; *RCC 2nd FNPRM*, 32 FCC Rcd at 6049-50, para. 4; 47 CFR § 64.2105. The Commission also adopted a safe harbor that reduces recording, retention, and reporting requirements for covered providers that limit the number of intermediate providers in a call path to terminating provider or terminating tandem. *First RCC Order*, 28 FCC Rcd at 16191-92, paras. 85-86; 47 CFR § 64.2107.

[6] *Rural Call Completion*, Second Report and Order and Third Further Notice of Proposed Rulemaking, 33 FCC Rcd 4199, 4204, para. 11 (2018) (describing monitoring rule for covered providers). For purposes of discussions in this Order, we refer separately to the *Second RCC Order* and the *Third RCC FNPRM*.

[7] More specifically, the Commission required that for each intermediate provider with which it contracts, a covered provider must (a) monitor the intermediate providers' performance in the completion of call attempts to rural telephone companies from subscriber lines for which the covered provider makes the initial long-distance call path choice; and (b) based on the results of such monitoring, take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing the intermediate provider from a particular route after sustained inadequate performance. *Second RCC Order*, 33 FCC Rcd. at 4205, para. 15; 47 CFR § 64.2111. The term covered provider "means a provider of long-distance voice service that makes the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers'

(continued….)

4. Second, the Commission eliminated the rural call completion data reporting requirement for covered providers that was established in the *First RCC Order*.[10] It concluded that the reporting rule was burdensome on covered providers while the resulting reports were of limited utility in discovering the source of rural call completion problems and a pathway to their resolution.[11] The Commission further concluded that the covered provider monitoring rule would be more effective than the reporting requirement because it imposed a direct, substantive obligation.[12]

5. On February 26, 2018, the RCC Act was signed into law. It directs the Commission to establish an intermediate provider registry, and stipulates that (1) certain intermediate providers must register with the Commission,[13] and (2) covered providers may only use registered intermediate providers to transmit covered voice communications.[14] In addition, the RCC Act directs the Commission to establish service quality standards for the transmission of covered voice communications by intermediate providers, and requires intermediate providers to comply with such standards.[15]

6. In the April 2018 *Third RCC FNPRM*, the Commission sought comment on how best to implement the RCC Act and craft service quality rules for intermediate providers in a way that would "ensure the integrity of the transmission of covered voice communications to all customers in the United States"[16] without imposing unnecessary burdens on providers.[17] After noting that "proposals that rely on or are consistent with industry best practices" are often less burdensome than other potential approaches, the *Third RCC FNPRM* proposed "to require intermediate providers to take reasonable steps to: (1) prevent 'call looping,' a practice in which the intermediate provider hands off a call for completion to a provider that has previously handed off the call; (2) 'crank back' or release a call back to the originating carrier, rather than simply dropping the call, upon failure to find a route; and (3) not process calls so as to 'terminate and re-originate' them (*e.g.*, fraudulently using "SIM boxes" or unlimited VoIP plans to re-originate large amounts of traffic in an attempt to shift the cost of terminating these calls from the

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affiliates." 47 CFR § 64.2101. The term "intermediate provider" "means any entity that - (1) Enters into a business arrangement with a covered provider or other intermediate provider for the specific purpose of carrying, routing, or transmitting voice traffic that is generated from the placement of a call placed - (i) From an end user connection using a North American Numbering Plan resource; or (ii) To an end user connection using such a numbering resource; and (2) Does not itself, either directly or in conjunction with an affiliate, serve as a covered provider in the context of originating or terminating a given call." *Id*.

[8] *See Second RCC Order*, 33 FCC Rcd at 4205-12, paras. 15-29.

[9] *See id.* at 4207-10, paras. 18-22.

[10] *First RCC Order*, 28 FCC Rcd at 16164, 16184-85, paras. 19, 65-67.

[11] *Second RCC Order*, 33 FCC Rcd at 4204, para. 13.

[12] *Id.*

[13] *See* 47 U.S.C. § 262(a) (requiring "[a]n intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission" to register with the Commission and abide by the service quality standards we adopt pursuant to the RCC Act).

[14] *Id*. § 262(b). "The term 'covered voice communication' means a voice communication (including any related signaling information) that is generated—(A) from the placement of a call from a connection using a North American Numbering Plan resource or a call placed to a connection using such a numbering resource; and (B) through any service provided by a covered provider." *Id*. § 262(i)(2).

[15] *Id*. § 262(c)(1)(B), (b).

originating provider to the wireless or wireline provider)."[18] These proposed standards were based on industry best practices developed by the Alliance for Telecommunications Industry Solutions (ATIS) and set forth in its Intercarrier Call Completion/Call Termination Handbook (ATIS RCC Handbook).[19]

7. In the *Third RCC FNPRM*, the Commission also sought comment on alternative proposals for intermediate provider service quality standards, including whether "to pursue 'the more general adoption of duties to complete calls analogous to those that already apply to covered providers under prior Commission rules and orders.'"[20] The Commission further sought comment on whether to eliminate or sunset the rural call completion data recording and retention requirements established in 2013.[21]

8. In the August 2018 *Third RCC Order*,[22] the Commission began its implementation of the RCC Act by codifying rules mandating registration of all intermediate providers and requiring that covered providers use only registered intermediate providers.[23] Specifically, the *Third RCC Order* required that intermediate providers submit certain information to the Commission via a publicly available intermediate provider registry.[24] The registration requirement applies to "any intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another."[25] The Commission set the registration deadline at "30 days after a Public Notice announcing the approval by the Office of Management and Budget of the rules establishing the registry,"[26] with any subsequent information updates made within 10 business days of a change.[27]

9. The *Third RCC Order* also implemented the RCC Act's prohibition against the use of unregistered intermediate providers by any covered provider in the path of a given call.[28] Covered providers have "a reasonable period of time, but no more than 45 days in which to adjust their call routing practices to avoid use of an unregistered intermediate provider after gaining knowledge of its deregistration or lack of registration."[29]

III. DISCUSSION

10. In this Fourth Report and Order, we complete our implementation of the RCC Act by adopting (1) service quality standards for intermediate providers; and (2) an exception to those standards

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[16] *Id*. § 262(c)(2).

[17] *Third RCC FNPRM*, 33 FCC Rcd at 4232-33, para. 86.

[18] *Id*. at 4233, para. 87.

[19] ATIS, Intercarrier Call Completion/Call Termination Handbook §§ 6.3-6.6 (2015), https://www.atis.org/docstore/product.aspx?id=26780 (ATIS RCC Handbook).

[20] *Third RCC FNPRM*, 33 FCC Rcd at 4234, para. 93 (citing Senate Commerce Committee Report at 6).

[21] *Third RCC FNPRM,* 33 FCC Rcd at 4238, para. 109; *see* 47 CFR § 64.2103; *see also First RCC Order*, 28 FCC Rcd at 16174-184, paras. 40-64.

[22] *See generally Rural Call Completion*, Third Report and Order, 33 FCC Rcd 8400 (2018) (*Third RCC Order*).

[23] *See* 47 CFR §§ 64.2115, 64.2117.

[24] *See Third RCC Order*, 33 FCC Rcd at 8402-04, paras. 6-8.

[25] *Id*. at 8407, para. 17 (quoting 47 U.S.C. § 262(a) (internal quotes omitted)).

[26] *Id*. at 8408, para. 19.

[27] *Id*. at 8409-10, para. 20.

[28] *Id*. at 8410-11, para. 25.

[29] *Third RCC Order*, 33 FCC Rcd 8412-13, para. 32.

for intermediate providers that qualify for the covered provider safe harbor in our existing rules. We also set forth procedures to enforce our intermediate provider requirements. Moreover, we sunset the rural call completion data recording and retention requirements adopted in the *First RCC Order* one year after the effective date of the service quality standards we adopt today. Finally, we deny petitions for reconsideration of the *Second RCC Order*.

A. Service Quality Standards for Intermediate Providers

11. As the RCC Act mandates, we adopt service quality standards for intermediate providers.[30] *First*, we impose on intermediate providers a general duty to complete calls. Specifically, we require intermediate providers to take steps reasonably calculated to ensure that any calls they handle are in fact completed. If an intermediate provider knows, or should know, that calls are not being completed to certain areas, the intermediate provider may be in violation of this general duty if it engages in acts or omissions that allow or effectively allow these conditions to persist. *Second*, when routing traffic destined for rural areas, intermediate providers must actively monitor the performance of any directly contracted downstream intermediate provider and, based on the results of such monitoring, take steps to address any identified performance issues with that provider. *Third*, intermediate providers must ensure that any additional intermediate providers to which they hand off calls are registered with the Commission. As was true for our monitoring obligations for covered providers, the service quality standards described in this section will go into effect six months from the date that this Order is released by the Commission, or 30 days after publication of a summary of this Order in the Federal Register, whichever is later.[31]

12. The service quality standards we adopt in this Order further the Commission's efforts to ensure that all calls to rural areas are completed and they further Congress's explicit purpose in passing the RCC Act: To "ensure the integrity of the transmission of covered voice communications to all customers in the United States" and "prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications."[32] By requiring intermediate providers to take steps reasonably calculated to ensure that all calls reach their intended destination, these service quality standards prevent intermediate providers from routing calls in a manner that results in persistent call completion problems. Where intermediate providers know, or should know, of a call completion issue, they must now act to address it. This rule establishes a minimum, baseline standard that will "ensure the integrity of the transmission of covered voice communications to all customers in the United States."[33] Our rules also recognize and address longstanding issues with call completion to rural areas. The requirement that intermediate providers take affirmative steps to monitor their performance when directing traffic to rural areas—and act to resolve these problems—is designed to "prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications," as Congress has directed.[34]

13. As discussed above, the RCC Act charges the Commission with the duty to promulgate

[30] The RCC Act requires intermediate providers that offer, or hold themselves out as offering, the capability to transmit "covered voice communications" from one destination to another, and that charge any rate to any other entity for the transmission, to comply with "service quality standards" to be established by the Commission. *See* 47 U.S.C. § 262(a)(2).

[31] *See Second RCC Order*, 33 FCC Rcd at 4222, para. 50. This phase-in period is intended to allow intermediate providers sufficient time to conduct any contractual negotiations necessary to come into compliance with our rules, and for the Commission's intermediate provider registry obligations to become effective.

[32] *Id*. § 262(c).

[33] *Id*.

[34] *Id*.

rules to "ensure the integrity of the transmission of covered voice communications to all customers in the United States." To ensure that the intermediate provider service quality requirements are meeting this charge and serving their intended purpose, we direct the Wireline Competition Bureau to seek comment, one year from the effective date of the intermediate provider service quality standards we adopt today, on the effectiveness of those standards in preventing intermediate providers, both those that also operate as covered providers and those that do not, from engaging in behavior that leads to call competition problems and on whether the rural call completion problems that these rules were intended to address have improved or changed.

1. Flexible Standards for Intermediate Providers

14. Based on the record in this proceeding, we decline to mandate compliance with the three ATIS best practices as proposed in the *Third RCC FNPRM*, and instead adopt a set of flexible standards for intermediate providers based on our existing rules for covered providers.[35] This approach is well supported by the record,[36] and by the legislative history of the RCC Act. The Senate Commerce Committee Report accompanying the RCC Act specifies that in adopting service quality standards, the Commission may apply the "more general adoption of duties to complete calls analogous to those that already apply to covered providers under prior Commission rules and orders."[37] The service quality standards for intermediate providers that we adopt today parallel the standards already applicable to covered providers under the *Second RCC Order* and earlier Commission orders and rulings,[38] ensuring that our rules will effectively address rural call completion issues while also avoiding unnecessary compliance burdens on intermediate providers—particularly those that serve dual roles as both covered and intermediate providers.

15. We agree with commenters who argue that mandating compliance with the three ATIS best practices may be impractical or unduly burdensome for some intermediate providers, particularly those relying on older network technologies to provide service.[39] Due to the differences among providers and their underlying networks, adoption of the ATIS best practices as the service quality standards applicable to all intermediate providers might impose unnecessary costs on some intermediate providers.[40] As Verizon observes, "[s]ome providers may find certain [ATIS] best practices useful, while others may prefer different best practices based on their particular networks, technologies, and call patterns. Requiring intermediate providers to implement the best practices outlined in the [*Third RCC FNPRM*] would reduce the flexibility providers need to manage their networks."[41] In addition, because the ATIS best practices are meant to be dynamic and responsive to technological and industry developments, imposing those as mandatory rules could hinder the evolution of these and similar industry best practices.[42] As the Commission found in the *Second RCC Order* with respect to its rural call completion

[35] *See Third RCC FNPRM*, 33 FCC Rcd at 4233, para. 87.

[36] *See, e.g.*, ATIS Comments at 4; INCOMPAS Comments at 4-5; ITTA Comments at 4-5, West Telecommunications Comments at 5-9; USTelecom Reply at 3-4; Verizon Reply at 2.

[37] *See* S. Rep. No. 115-6, at 6 (2017), https://www.congress.gov/115/crpt/srpt6/CRPT-115srpt6.pdf (Senate Commerce Committee Report).

[38] *See generally Second RCC Order*, 33 FCC Rcd 4199; *First RCC Order*, 28 FCC Rcd 16154; *Rural Call Completion*, Declaratory Ruling, 27 FCC Rcd 1351 (WCB 2012) (*2012 Declaratory Ruling*).

[39] *See* Alaska Communications Comments at 2; ITTA Comments at 5-6; Sprint Comments at 5; USTelecom Comments at 7; Letter from Michele G. Cober, Staff Counsel, Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 2-3 (filed Nov. 13, 2018).

[40] *See* Alaska Communications Comments at 3-4.

[41] Verizon Comments at 8-9.

[42] *See* ATIS Comments at 4-5.

rules for covered providers, requiring compliance with ATIS best practices "could have a chilling effect on future industry cooperation to develop solutions to industry problems."[43] As USTelecom observes, these same concerns are relevant to our efforts to craft service quality standards for intermediate providers.[44]

16. We also agree with commenters who argue that we should adopt a flexible regulatory approach to intermediate provider service quality standards, and that we should seek to align our service quality standards for intermediate providers with those call completion rules that already apply to covered providers.[45] As ATIS notes, "many providers are both 'covered providers' and 'intermediate providers,' changing roles on a call to call basis."[46] USTelecom further submits that "these entities generally utilize the same network facilities, the same business processes, and the same vendors to process calls" regardless of whether they operate as a covered provider or intermediate provider, and that each category of provider has the same fundamental obligation to ensure that calls traversing their networks are completed.[47] We have found that the monitoring rule applicable to covered providers "encourages covered providers to ensure that calls are completed, assigns clear responsibility for call completion issues, and enhances our ability to take enforcement action where needed to address persistent problems."[48] Moreover, we agree with commenters that application of a similar approach to intermediate providers should provide similar benefits and avoid unnecessary costs.[49] For these reasons, the rules we adopt today for intermediate providers closely parallel those that currently apply to covered providers.

17. We therefore reject the arguments from several commenters urging adoption of the Commission's proposal to require compliance with the three ATIS best practices listed in the *Third RCC FNPRM* rather than allowing for more flexibility.[50] These commenters generally argue that the best practices provide an appropriate regulatory framework because they have been designed by a broad cross section of industry stakeholders to effectively address call completion issues and are widely known and utilized in the industry.[51] NTCA, for example, argues that "[i]ndustry defined best practices such as those identified by ATIS establish an appropriate base-line standard" by which to evaluate intermediate providers' call completion efforts.[52] Although we agree with these observations as a general matter, after carefully considering the record, we conclude that any benefits associated with the adoption of the ATIS best practices framework proposed in the *Third RCC FNPRM* are likely outweighed by the compliance burdens associated with this approach. NTCA argues that the ATIS best practices are "the most proven measure thus far to accomplish the goal of minimizing . . . rural call completion problems."[53] However, while the ATIS best practices may be a useful guide to addressing call completion issues, they may not be

[43] *Second RCC Order*, 33 FCC Rcd at 4207-08, para. 19.

[44] USTelecom Comments at 7.

[45] *See* ITTA Comments at 5-6; INCOMPAS Reply at 2-3; USTelecom Reply at 3-5.

[46] *See* ATIS Comments at 4; *see also* USTelecom Comments at 6; Verizon Comments at 11.

[47] *See* USTelecom Comments at 5-6.

[48] *Second RCC Order*, 33 FCC Rcd at 4204, para. 12.

[49] *See* USTelecom Comments at 5-6; Verizon Comments at 11.

[50] *See* ANI Comments at 4-5; Inteliquent Comments at 2; NTCA Comments at 3-4; NTCA Comments at 3-4; West Telecom Reply at 7 (supporting adoption of proposed best practices framework, subject to modification of the "crank back" requirement); *but see* West Telecom Comments at 7 (noting that application of the ATIS best practices may not be appropriate in all situations, and urging flexible implementation of rules based on industry standards).

[51] *See* West Telecom Comments at 6; Inteliquent Comments at 2-3.

[52] NTCA Comments at 4.

[53] *Id*.

appropriate for all networks or providers, and mandating compliance with the proposed best practices may create unnecessary compliance burdens for providers that serve as both covered providers and intermediate providers.[54]

18. In addition to the shortcomings discussed above, the adoption of the proposed ATIS best practices framework could raise other practical issues that might limit its utility. For example, West Telecom, while supporting the use of the ATIS best practices as a general regulatory framework in lieu of "Commission micro-management," notes that "the ATIS RCC Handbook may not necessarily reflect [the] best approaches to resolving certain situations" and that "the Commission should continue to decline to mandate strict compliance with the ATIS RCC Handbook or other industry standards in all situations."[55] Similarly, ANI generally supports the Commission's proposed framework based on the ATIS best practices but also "urges the Commission not to impose more complex service quality standards, which may not be appropriate for all intermediate providers and could unnecessarily restrict carriers' flexibility to determine the standards best suited to their individual networks."[56] Additionally, ANI and West Telecom both point out potential issues related to our adoption of a "crank back" requirement.[57] Furthermore, at least one rural intermediate provider has argued that its legacy infrastructure precludes compliance with the proposed ATIS best practices framework as a technical matter.[58]

19. Notwithstanding these issues, we agree with commenters that the ATIS best practices provide an effective roadmap for mitigating call completion issues, and we reaffirm our finding in the *Second RCC Order* that the Commission should encourage providers to adopt these practices, while being mindful that the ATIS best practices may not be appropriate for all providers.[59] For this reason, as is true of our monitoring rule for covered providers,[60] we will treat compliance with the ATIS best practices, as specified in the 2015 ATIS RCC Handbook,[61] as a safe harbor demonstrating compliance with our service quality standards for intermediate providers, including the general duty to deliver covered voice communications and the intermediate provider monitoring requirements discussed below. Consistent with our approach to covered providers in the *Second RCC Order*,[62] we will also take the ATIS RCC Handbook best practices into account when evaluating whether an intermediate provider has established an effective monitoring regime for evaluating its performance in delivering calls to rural areas.[63] We find, as we did in the *Second RCC Order*, that this approach will "encourage adherence to the best practices while giving . . . providers flexibility to tailor their practices to their particular networks and business arrangements.[64]

[54] *See supra* paras. 15-16.

[55] West Telecom Comments at 7.

[56] ANI Comments at 5.

[57] *See* ANI Comments at 5 (arguing that "certain providers have historically used crank back codes improperly" and that our proposed rules could potentially "incentivize this type of coding misclassification"); West Telecom Reply at 7.

[58] *See* Alaska Communications Comments at 2-4.

[59] *Second RCC Order*, 33 FCC Rcd at 4208, para. 20.

[60] *Id*.

[61] *See supra* note 19.

[62] *Second RCC Order*, 33 FCC Rcd at 4208, para. 20.

[63] As discussed above, however, we recognize that the ATIS best practices may not be appropriate for all providers and all network configurations, and our evaluation of an intermediate provider's monitoring regime will necessarily reflect these considerations.

[64] *Second RCC Order*, 33 FCC Rcd at 4208, para. 20.

2. Intermediate Providers Must Take Steps Reasonably Calculated to Ensure That All Covered Voice Communications Traversing Their Networks Are Delivered to their Destination

20. Building on the regulatory approach for ensuring rural call completion that we have previously applied to covered providers, in this Order we require intermediate providers to take steps reasonably calculated to ensure that all covered voice communications that traverse their networks are delivered to their destinations.[65] An intermediate provider may violate this general duty to complete calls if it knows, or should know, that calls are not being completed to certain areas, and it engages in acts or omissions that allow or effectively allow these conditions to persist.

21. As is true for covered providers under the *2012 Declaratory Ruling* and *Second RCC Order*, under this rule intermediate providers must promptly resolve any anomalies or problems that arise preventing call completion, and take action to ensure they do not recur.[66] If an intermediate provider determines that responsibility for a call completion problem lies with a party other than the provider itself or any of its downstream providers, the provider must use commercially reasonable efforts to alert that party to the anomaly or problem. Willful ignorance will not excuse a failure by an intermediate provider to investigate evidence of poor performance.[67] Evidence of poor performance includes, among other indicators, "persistent low answer or completion rates; unexplained anomalies in performance reflected in the metrics used by the [intermediate] provider; repeated complaints to the Commission, state regulatory agencies, or [intermediate] providers by customers, rural incumbent LECs and their customers, competitive LECs, and others."[68]

22. We note that nothing in this rule should be construed to dictate how intermediate providers must route their traffic, nor does the general duty to deliver covered voice communications impose strict liability upon intermediate providers who fail to complete calls. As we specified in the context of our monitoring rule for covered providers, "[w]e do not impose strict liability on . . . providers for a call completion failure; rather, we may impose a penalty where a . . . provider fails to take actions to prevent reasonably foreseeable problems or, if it knows or should know that a problem has arisen, where it fails to investigate or take appropriate remedial action."[69] Similarly, the rules we adopt today for intermediate providers focus on addressing persistent call completion issues; thus, strict liability under our service quality rules for isolated call failures is not contemplated.[70] Rather, we require all intermediate providers to take steps reasonably calculated to ensure that covered voice communications reach their destination, utilizing the tools available to each provider, recognizing that these tools may vary depending on the size of the provider, their network configuration, and other variables.

23. As we found in the *Third RCC Order*, the provisions of the RCC Act are not limited to rural areas;[71] therefore, we apply the general duty discussed above to all covered voice communications,

[65] The RCC Act defines "covered voice communications" as "a voice communication (including any related signaling information) that is generated—(A) from the placement of a call from a connection using a North American Numbering Plan resource or a call placed to a connection using such a numbering resource; and (B) through any service provided by a covered provider." 42 U.S.C. § 262(i)(2).

[66] *2012 Declaratory Ruling*, 27 FCC Rcd at 1355-56, paras. 11-12; *Second RCC Order*, 33 FCC Rcd at 4211, para. 25.

[67] *Second RCC Order*, 33 FCC Rcd at 4211, para. 25.

[68] *Id*. at 4210, para. 23.

[69] *Id*. at 4219, para. 42.

[70] *Id*.

[71] *See Third RCC Order*, 33 FCC Rcd at 8405-8407, paras. 13-16.

regardless of their destination. This rule directly addresses Congress's instruction to adopt rules to "ensure the integrity of the transmission of covered voice communications to *all* customers in the United States[.]"[72] Our approach also aligns the obligations of intermediate providers with those applicable to covered providers pursuant to the *2012 Declaratory Ruling* and the *Second RCC Order*, which require a covered provider "that knows or should know that it is providing degraded service to certain areas" to take action to correct the problem and "ensure that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately."[73]

3. Intermediate Providers Must Monitor the Performance of Any Directly Contracted Intermediate Providers When Routing Traffic to Rural Areas

24. In addition to the general duty to deliver all covered voice communications, we adopt the *Third RCC FNPRM* proposal to require that intermediate providers establish processes to monitor their rural call completion performance.[74] Therefore, when transmitting covered voice communications to rural areas, intermediate providers must: (a) monitor the performance of each intermediate provider with which it contracts; and (b) based on the results of such monitoring, take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing that provider for sustained poor performance.

25. These requirements parallel the monitoring obligations the Commission adopted for covered providers in the *Second RCC Order*,[75] and are broadly supported by the record in this proceeding.[76] We agree with arguments advanced by ITTA and several other commenters that "the Commission should model this self-monitoring rule on the monitoring rule for covered providers."[77]

26. As was true of our covered provider monitoring requirements, the rural call completion performance monitoring obligation "entails both prospective evaluation to prevent problems and retrospective investigation of any problems that arise."[78] Prospective monitoring "includes regular observation of intermediate provider performance and call routing decision-making; periodic evaluation to determine whether to make changes to improve rural call completion performance; and actions to promote improved call completion performance where warranted."[79] Retrospective monitoring requires intermediate providers to take steps reasonably calculated to correct any identified performance problems.[80] Where intermediate providers detect persistent problems routing covered voice traffic to rural areas, we require intermediate providers to develop a solution that is reasonably calculated to be effective, and specifically require intermediate providers to remove a contracted intermediate provider from a route after sustained inadequate performance, except in situations where an intermediate provider can demonstrate that no alternative routes exist. Intermediate providers that do not effectively correct problems with delivery of covered voice communications to rural areas may be subject to enforcement

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[72] 47 U.S.C. § 262(c) (emphasis added).

[73] *See 2012 Declaratory Ruling*, 27 FCC Rcd at 1355-56, paras. 11-12; *see also Second RCC Order*, 33 FCC Rcd at 4214, para. 33.

[74] *See Third RCC FNPRM*, 33 FCC Rcd at 4234, para. 90.

[75] *Second RCC Order*, 33 FCC Rcd at 4259, para. 30.

[76] *See* ANI Comments at 7; INCOMPAS Comments at 5; Inteliquent Comments at 3-4; ITTA Comments at 6; NTCA Comments at 4; USTelecom Comments at 6.

[77] ITTA Comments at 6.

[78] *Second RCC Order*, 33 FCC Rcd at 4205, para. 15.

[79] *See id*. at 4206, para. 17.

[80] *See id*. at 4210, para. 23.

action for violations of our service quality standards, including the general duty to deliver covered voice traffic to its destination and the monitoring requirement. Together, these rules satisfy Congress's direction to the Commission to "ensure the integrity of the transmission of covered voice communications to all customers in the United States" and "prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications."[81]

4. Intermediate Providers Must Ensure That Any Intermediate Providers to Which They Hand Off Calls are Registered

27. We also require intermediate providers to ensure that any additional intermediate providers to which they hand off calls are registered with the Commission pursuant to section 64.2115 of the Commission's rules.[82] As is true of the general duty to complete calls and the rural call completion performance monitoring obligations discussed above, we adopt this rule pursuant to the authority granted to the Commission by Congress in the RCC Act, which directs us to develop service quality standards for intermediate providers.[83] This requirement aligns with the prohibition on covered provider use of unregistered intermediate providers pursuant to the RCC Act and section 64.2117 of the Commission's rules, and will promote compliance with the registry provisions of the RCC Act by making intermediate providers jointly responsible for ensuring the registration status of directly contracted downstream intermediate providers in their call path.[84]

28. The RCC Act requires that all intermediate providers must maintain a registration with the Commission in order to transmit covered voice communications, and the *Third RCC Order* requires covered providers to use contractual restrictions designed to ensure the registration status of any downstream intermediate providers in the call path.[85] And, pursuant to the RCC Act and the *Third RCC Order*, information concerning the registration status of intermediate providers will be readily available on the Commission's website.[86] For these reasons, we expect the burdens associated with this

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[81] 47 U.S.C. § 262(c).

[82] *See Third RCC FNPRM*, 33 FCC Rcd at 4235, para. 95 (seeking comment on whether to "require intermediate providers to certify that they do not transmit covered voice communications to other intermediate providers that are not registered with the Commission"); *see also* 47 CFR § 64.2115 (requiring intermediate providers to maintain a registration with the Commission).

[83] *See* 47 U.S.C. § 262(c). The RCC Act requires that all intermediate providers register with the Commission and prohibits covered providers from using any unregistered intermediate providers. 47 U.S.C. § 262(a)(1), (b). We find that extending this prohibition to intermediate providers as well will further the aims of the RCC Act by making all participants in the call path responsible for ensuring the registration of any subsequent intermediate providers. We also note that the RCC Act expressly requires the rules we promulgate pursuant to the statute to ensure the integrity of the transmission of covered voice communications "to all customers in the United States" and to "prevent unjust or unreasonable discrimination among areas of the United States" in the delivery of such communications. *See* 47 U.S.C. § 262(c)(2). Accordingly, we clarify that the registry requirements in section 64.2115 as well as the intermediate service quality standards we adopt today do not apply to non-U.S. intermediate providers on calls terminating outside of the United States. *See* Letter from Robert S. Koppel, Lukas, LaFuria, Gutierrez & Sachs, LLP, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 1 (filed Mar. 5, 2019) (seeking clarification that "the Commission will not require the final 'intermediate provider' in the United States to ensure that any additional, non-U.S. intermediate providers, are registered").

[84] *See* 47 U.S.C. § 262(b); 47 CFR § 64.2117. The *Third RCC Order* requires covered providers to "ensure that any directly contracted intermediate provider is registered with the Commission; and (ii) implement 'contractual restrictions . . . that are reasonably calculated to ensure' that any subsequent intermediate providers" in the call path are also registered. *Third RCC Order*, 33 FCC Rcd at 8411-12, para. 29.

[85] *See Third RCC Order*, 33 FCC Rcd at 8411-12, para. 29.

[86] *See id*. at 8402, para. 6.

requirement to be minimal.

29. In order to further reduce the compliance burdens associated with this rule, we decline to require intermediate providers to submit a certification to the Commission stating that they do not transmit covered voice communications to other unregistered intermediate providers.[87] As we noted with respect to the monitoring rule for covered providers, "[w]e expect all entities subject to our rules to comply at all times," and we decline to impose a certification requirement absent a clear public interest benefit.[88] Although some parties believe a certification, for example on an annual basis,[89] is useful to ensure intermediate providers are taking reasonable steps to comply with Commission requirements, we find consistent with other commenters[90] that the RCC Act and Commission rules provide sufficient methods to monitor and enforce non-compliance. For example, as discussed below, the Commission has authority to take enforcement actions against covered and intermediate providers that are not registered such as forfeitures and deregistration.[91] We therefore decline to require intermediate providers to certify that they do not transmit covered voice communications to other intermediate providers that are not registered with the Commission.[92] Nor do we require intermediate providers to take responsibility for ensuring the registration status of downstream intermediate providers with which they do not share a direct relationship, as we do for covered providers.[93] Compared with covered providers, which must exceed a minimum size threshold and determine the initial long-distance path of a call, intermediate providers may have less ability to modify call routing paths. And, because each intermediate provider in the path of a given call is responsible for determining the registration of any other intermediate provider to which it hands off calls, we find that such a requirement would be duplicative and, thus, unnecessary.

5. Other Issues

30. *Additional Rules to Prevent Ring Signaling Manipulation*. We decline to adopt any additional rules to prevent intermediate providers from manipulating signaling information for calls destined for rural areas.[94] As supported in the record, our existing rules already require intermediate providers to pass and return unaltered signaling information, and we conclude that additional rules are unnecessary.[95] Although NTCA supports prohibiting intermediate providers from manipulating signaling

[87] *See Third RCC FNPRM*, 33 FCC Rcd at 4235, para. 95.

[88] *Second RCC Order*, 33 FCC Rcd at 4220-21, para. 45.

[89] *See* NTCA Comments at 4-5.

[90] *See* ITTA Comments at 6; ATIS Reply at 3 (stating that the "mandated monitoring and correction requirements adopted in the *Second Report and Order* and threat of enforcement by the Commission of the intermediate carrier obligations should be sufficient to allow non-compliant intermediate providers to be identified and appropriately managed"); USTelecom Reply at 6.

[91] *See infra* Section C.

[92] *See Third RCC FNPRM*, 33 FCC Rcd at 4235, para. 95.

[93] *See* ITTA Comments at 7 n.20 ("[A]n intermediate provider should only be accountable for taking reasonable steps to ensure that any other intermediate provider to which it directly transmits a covered voice communication is registered.").

[94] *Third RCC FNPRM*, 33 FCC Rcd at 4233, para. 88.

[95] *Id.*; *see also* 47 CFR §§ 64.1601(a)(2), 64.2201(b); Verizon Reply at 4 ("There are already rules in place to prevent that sort of manipulation. Those rules are sufficient, and there is no basis or need for the Commission to adopt additional rules."); West Telecom Comments at 15. Moreover, a covered provider is also responsible when a downstream intermediate provider unlawfully generates ring signaling on a call. *See Third RCC FNPRM*, 33 FCC Rcd at 4214, para. 33 n.110.

information, it does not recommend additional rules.[96] We note that section 64.1601(a)(2) of our rules makes clear that intermediate carriers are already mandated to faithfully relay signaling.[97] As such, we decline to impose additional regulation.

31. *Limitation of number of intermediate providers.* We also decline to require intermediate providers to limit the number of subsequent intermediate providers in the call chain.[98] Although Inteliquent supports a limitation and requests the Commission to limit the number of intermediate providers in the call path to no more than three,[99] the majority of commenters reject this proposal.[100] We agree with West Telecom that the number of intermediate providers is not "an appropriate proxy to identify specific intermediate providers or routing practices that interfere with RCC."[101] We do not agree with Inteliquent that, in all cases, limiting the number of intermediate providers will encourage efficient network architecture and thus improve call completion rates.[102] The Commission remains concerned that specific limitations on the number of intermediate providers "conflate[] the number of 'hops' with good hops . . . [by assuming] that a small number of badly performing intermediate providers are better than multiple well-performing intermediate providers."[103] Instead, we believe that providers should have flexibility to meet the requirements the Commission has in place. Consistent with our treatment of covered providers, although we decline to *mandate* a specific limit on the number of intermediate providers in the call chain, we believe the service quality standards adopted herein will encourage intermediate providers to limit other providers in the chain.[104]

32. *Numeric performance thresholds*. In an effort to consider alternative service quality standards, we sought comment on whether the Commission should require intermediate providers to meet or exceed one or more numeric rural call completion performance targets.[105] Consistent with the majority of comments, we decline to set specific numeric thresholds, but rather allow intermediate providers flexibility to self-monitor rural call completion performance.[106] We therefore decline to adopt

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[96] NTCA Comments at 4. We note that a number of carriers have filed various waivers of the call signaling rules adopted by the Commission in the *USF/ICC Transformation Order*; *see 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 (2011); 47 CFR. § 64.1601(a); *see also, e.g.*, *Wireline Competition Bureau Seeks Comment on AT&T Petition for Limited Waiver of Call Signaling Rules*, CC Docket Nos. 01-92 et al., Public Notice, 27 FCC Rcd 219 (WCB Jan. 10, 2012); *Alaska Rural Coalition Petition for Limited Waiver of Call Signaling Rules*, CC Docket Nos. 01-92 et al., Public Notice, 27 FCC Rcd 3042 (WCB Apr. 4, 2012); *Wireline Competition Bureau Seeks Comment on LNGS Carries for Limited Waiver of Call Signaling Rules*, CC Docket Nos. 01-92 et al., Public Notice 27 FCC Rcd 7144 (WCB Aug. 10, 2012). Because these waiver petitions involve the technical signaling capabilities of the various carriers, we conclude that these petitions are outside the scope of this rulemaking, and therefore, decline to address them as part of this *Order*.

[97] 47 CFR § 64.1601(a)(2).

[98] *See Third RCC FNPRM*, 33 FCC Rcd at 4233-34, para. 89 (seeking comment on this issue).

[99] Inteliquent Comments at 3.

[100] *See* ATIS Comments at 5; ITTA Comments at 6; HD Tandem Reply at 3; West Telcom Reply at 3-4.

[101] West Telecom Reply at 4.

[102] Inteliquent Comments at 3.

[103] *Second RCC Order*, 33 FCC Rcd at 4209, para. 21 (citation omitted).

[104] *Id.* at 4208-09, para. 21.

[105] *Third RCC FNPRM*, 33 FCC Rcd at 4235, para. 94.

Inteliquent's proposal for performance targets on a weekly and LATA/OCN basis.[107] We agree, as described by Georgetown University, that while evaluation of these and other metrics over time is a valuable tool to ensure call completion, specific performance targets are not useful.[108] Nonetheless, we expect intermediate providers to monitor their networks and downstream providers with sufficient specificity to adequately evaluate their performance.[109] We recognize that intermediate providers handle calls on a variety of networks[110] and agree with most commenters that a reasonable self-monitoring process—consistent with monitoring processes for covered providers and contemplated by the Senate Commerce Committee Report[111]—will sufficiently monitor downstream providers and allow correction.[112]

33. *Modification of Rules Adopted in the Second RCC Order*. We also decline to make any modifications to rules adopted in the *Second RCC Order*.[113] As discussed in more detail below in rejecting USTelecom's Petition for Reconsideration,[114] we reaffirm the Commission's findings in the *Second RCC Order* that the monitoring rule is necessary to address ongoing rural call completion issues, and is supported by the record in this proceeding and the regulatory regime established by Congress in the RCC Act.[115] We disagree with ITTA that the Commission should "abandon the covered provider monitoring requirements altogether, or at least curtail them substantially."[116] We further disagree with NCTA that covered providers should only be responsible for conduct directly within their control.[117] Rather, we again reject any "all-or-nothing" approach to the monitoring rule and reaffirm that our balanced approach provides for responsibility for rural call completion without imposing an unduly rigid or burdensome mandate.[118]

B. Exception to Service Quality Standards for Safe Harbor Covered Providers

34. The RCC Act provides that the service quality standards established by the Commission pursuant to the RCC Act "shall not apply to a covered provider" that has certified as a safe harbor provider under Section 64.2107(a) on or before February 26, 2019 (which is one year after the enactment

(Continued from previous page)

[106] *See* ANI Comments at 7; INCOMPAS Comments at 5, ITTA Comments at 6; NTCA Comments at 4; USTelecom Comments 6; US West Comments at 8-9; AICC Reply at 12.

[107] *See* Inteliquent Comments at 4; *see also* 47 CFR § 64.2101 (defining "Operating company number (OCN)" as "a four-place alphanumeric code that uniquely identifies a local exchange carrier"); 47 CFR § 53.3 (defining "Local Access and Transport Area (LATA)" as "a contiguous geographic area: (1) Established before February 8, 1996 by a BOC such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or (2) Established or modified by a BOC after February 8, 1996 and approved by the Commission").

[108] *See* Trent Stohrer et al., Geo. Sec. & Software Eng'g Research Ctr., *Issues, Analysis, and Tools for Rural Call Completion Issues* 3 n.9, 7 (2017), https://ecfsapi.fcc.gov/file/104180548507226/S2ERC%2013-39%20Filing.pdf. Most performance metrics vary widely between OCN pairs based on factors unrelated to completion issues. *See id.*

[109] *See Second RCC Order*, 33 FCC Rcd at para. 18.

[110] *See* INCOMPAS Reply at 2 (noting the "diversity of providers serving the rural call chain").

[111] *See* Senate Commerce Committee Report at 6.

[112] *See* ITTA Comments at 6; NTCA Comments at 4; USTelecom Comments 6.

[113] *See Third RCC FNPRM*, 33 FCC Rcd at 4239, para. 111.

[114] *See infra* Section III.E.2.

[115] *Second RCC Order*, 33 FCC Rcd at 4205-06, paras. 16-18.

[116] ITTA Comments at 10.

of the RCC Act) and that continues to maintain eligibility for the safe harbor.[119] To implement this provision of the RCC Act, we adopt an exception to the service quality standards described above for intermediate providers that qualify for our covered provider safe harbor established in new section 64.2109 of the Commission's rules, similar to the Commission's existing section 64.2107 safe harbor from the rural call completion recording and retention requirements.[120]

35. As the Commission proposed in the *Third RCC FNPRM*,[121] we maintain the three safe harbor requirements as currently provided in our existing rules. Therefore, in order to qualify for the exemption from the intermediate provider service quality standards established by the RCC Act, covered providers must satisfy three requirements: (1) the covered provider must restrict by contract any intermediate provider to which a call is directed from permitting more than one additional intermediate provider in the call path before the call reaches the terminating provider or terminating tandem; (2) any nondisclosure agreement with an intermediate provider must permit the covered provider to reveal the identity of the intermediate provider and any additional intermediate provider to the Commission and to the rural incumbent LEC(s) whose incoming long-distance calls are affected by the intermediate provider's performance; and (3) the covered provider must have a process in place to monitor the performance of its intermediate providers.[122]

36. We note that the service quality standards we adopt today under the RCC Act apply only to intermediate providers; however, the exemption established by the RCC Act is, like the safe harbor in our existing rules, limited to covered providers.[123] We therefore clarify that covered providers qualifying for our safe harbor on or before February 26, 2019 will be exempt from our service quality standards when serving as intermediate providers, provided they maintain their safe harbor certification with the Commission.

C. Enforcement of Intermediate Provider Requirements

37. In the *Third RCC Order*, the Commission required intermediate providers that offer to transmit covered voice communications to register with the Commission, pursuant to subsection (a)(1) of the RCC Act.[124] The Commission determined that because the RCC Act intends the registry to function as a qualification for providers to enter the intermediate provider market, the requirement to register (as well as to maintain registration in good standing) is tantamount to a license.[125] The Commission concluded that it may exercise its forfeiture authority against intermediate providers that fail to register without first issuing a citation.[126]

38. Under subsection (a)(2) of the RCC Act, once the service quality standards we adopt here take effect, registered intermediate providers, and providers that subsequently seek registration with the Commission, must comply with these standards. Accordingly, as supported by a number of commenters,

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[117] NCTA Comments at 5.

[118] *Second RCC Order*, 33 FCC Rcd at 4216, para. 35.

[119] *See* 47 U.S.C. § 262(h).

[120] *See* 47 U.S.C. § 262(h); 47 CFR § 64.2107; *see also infra* Part D; *infra* Appendix A (new section 64.2109).

[121] *See id.*; *Third RCC FNPRM*, 33 FCC Rcd at 4236-37, para. 101.

[122] *See infra* Appendix A (new 47 CFR § 64.2109(a)(1)-(2)).

[123] *See* 47 U.S.C. § 262(h); 47 CFR § 64.2107. We note that we did not receive comments about this disparity.

[124] *Third RCC Order*, 33 FCC Rcd at 8407, para. 17; 47 CFR § 64.2115.

[125] *Third RCC Order*, 33 FCC Rcd at 8409, para. 22.

[126] *Id.* at 8409-10, para. 23.

we conclude that we may deregister intermediate providers from the registry as an enforcement option.[127] As in the case of intermediate providers that fail to register with the Commission, we also may exercise our forfeiture authority against intermediate providers that fail to comply with the service quality standards, and, as explained in the *Third RCC Order*, we may do so without first issuing a citation.[128] Our choice of enforcement remedy will depend upon the totality of circumstances, and we may impose penalties for both single infractions and patterns of non-compliance or misconduct. Requiring repeated violations before allowing enforcement action, as some commenters propose, could result in, if not indirectly encourage, systemic call completion issues—an outcome that would frustrate the underlying purpose of the RCC Act.

39. When the Commission seeks to remove an intermediate provider from the registry, the procedures specified in Section 558 of the Administrative Procedure Act apply.[129] Except in cases of willfulness or where public health, interest, or safety requires otherwise, deregistration may occur after the intermediate provider has been given written notice of the facts or conduct at issue and an opportunity to demonstrate or achieve compliance with the service quality standards.[130] Such notice will take the form of a publicly issued order to show cause. Intermediate providers that do not present a response with written evidence of their compliance with the requirements identified in the notice[131] or a detailed plan on how they intend to achieve compliance within thirty days will be removed from the registry. A hearing will not be required unless the intermediate provider's response presents a substantial and material question of fact. In any case where a hearing proceeding is conducted, the hearing shall be based on written evidence only.[132] Deregistration orders will be subject to judicial review under Section 402(a) of the Communications Act.[133]

40. Moreover, a covered provider that becomes aware that an intermediate provider it uses is violating the service quality standards may also be subject to enforcement action, even if the intermediate provider is properly registered. Because covered providers must know or be capable of knowing the identity of all intermediate providers in the path of a given call,[134] monitor the performance of their intermediate providers in completing calls to rural destinations, and take steps to correct performance

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[127] *See* ATIS Comments at 5-6; HD Tandem Comments at 7; AICC Reply at 4-5.

[128] *Third RCC Order*, 33 FCC Rcd at 8409-10, para. 23. In such cases, as in all forfeiture matters, the Commission will consider the nature, circumstances, extent and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. 47 U.S.C. § 503(b)(2)(E).

[129] 5 U.S.C. § 558.

[130] *Id.*; *cf.* NCTA Reply Comments at 6 (non-compliant intermediates should be given reasonable notice, an opportunity to remedy the noncompliant arrangement, and be made to notify all directly affected covered providers and intermediates upon deregistration).

[131] For this reason, we find it unnecessary to establish a separate requirement that intermediate providers "maintain records of how they are complying" with the service quality standards, as NTCA suggests. *See* Letter from Jill Canfield, Vice President of Legal, NTCA to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 3 (filed Mar. 7, 2019) (NTCA Mar. 7 Ex Parte Letter).

[132] *Cf.* 47 CFR § 1.1164(f).

[133] 47 U.S.C. § 402(a). We note that, if a proceeding results in deregistration, the order to show cause will afford affected covered providers ample notice to explore alternative arrangements, in order to migrate their traffic to other, compliant, intermediate providers if necessary. *See* NCTA Reply Comments at 6.

[134] *Third RCC Order*, 33 FCC Rcd at 8414, para. 37. As explained in the *Third RCC Order*, covered providers must disclose this information to the Commission or state regulators within two weeks of a request. *Id.* at para. 41; *see also Third RCC FNPRM*, 33 FCC Rcd at 4231, para. 82.

problems,[135] when a provider learns that its intermediate provider is violating service quality standards, it is responsible for removing that provider from all affected call paths until the provider demonstrates compliance. A failure to do so may result in enforcement action.

D. One-Year Sunset of Recording and Retention Rules

41. We sunset the rural call completion data recording and retention requirements established in the *First RCC Order*[136] one year after the effective date of the service quality standards adopted here today. Based upon the record developed since those requirements' adoption in 2013, and the analysis the Wireline Competition Bureau (Bureau) developed in the 2017 RCC Data Report,[137] we find that the few, if any, benefits the call data offers do not outweigh the burden presented by having covered providers collect and retain data that is not useful in monitoring or remedying call completion issues.

42. The call data recording, retention, and reporting requirements were intended to improve the Commission's ability to monitor rural call completion, and to aid enforcement action when necessary.[138] These requirements, instituted by the 2013 *First RCC Order*, apply to covered providers for calls signaled as Answered, Busy, Ring No Answer, and Unassigned.[139] The Commission declined to then adopt a specific sunset date for data recording, retention, and reporting,[140] but directed the Bureau to produce a report,[141] analyzing covered provider call data "submitted during the first two years of the data collection's effectiveness"[142] and committed to complete a proceeding reevaluating "whether to keep, eliminate, or amend the data collection and reporting rules three years after they become effective."[143]

43. The Bureau recommended in its resulting 2017 RCC Data Report that the Commission consider eliminating the recording, retention, and reporting rules.[144] The Bureau reached this recommendation after finding significant data reliability issues—including inconsistent covered provider categorization methodologies for the four call types, and failure by some covered providers to exclude autodialer, wholesale, and intermediate provider traffic because of technical inabilities to do so.[145] The RCC Data Report noted that even if the Commission were to modify the recording, retention, and reporting requirements, "it is not clear that that the benefits of such modifications would outweigh the costs."[146] In the *Second RCC Order*, the Commission instituted the Bureau's recommendation in part by

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[135] 47 CFR § 64.2111.

[136] *See First RCC Order*, 28 FCC Rcd at 16174-185, paras. 40-67.

[137] *See generally Rural Call Completion*, Report, 32 FCC Rcd 4980 (WCB 2017) (RCC Data Report).

[138] *See Second RCC FNPRM*, 32 FCC Rcd at 6049, para. 4.

[139] *See First RCC Order*, 28 FCC Rcd at 16174-16183, 16218, paras. 40-64, Appx. C.

[140] *Id*. at 16198, para. 104.

[141] The *First RCC Order* prescribed that the report be published "no more than 90 days after the last reports are due for that two-year period," which was July 31, 2017. *First RCC Order*, 28 FCC Rcd at 16154, 16198, para. 105; *see also* 47 CFR § 64.2105 (2017) (stating data reporting periods); *Wireline Competition Bureau Announces that Certain Long Distance Providers Must Begin Recording the Data Required for Rural Call Completion Reporting*, Public Notice, 30 FCC Rcd 2058, 2059 (WCB 2013) (stating initial recording period began April 1, 2015, and the first report was due August 1, 2015).

[142] *First RCC Order,* 28 FCC Rcd at 16198, para. 105.

[143] *Id*. at 16198, para. 106.

[144] RCC Data Report, 32 FCC Rcd at 4995, para. 38.

[145] *Id*. at 4995-96, paras. 38-39.

[146] *Id*. at 4996, para. 39.

eliminating the reporting, but keeping the recording and retention requirements.[147] Having received significant comments in favor of eliminating all three requirements pursuant to the *Second RCC FNPRM*,[148] the *Third RCC FRNPM* sought further comment on the elimination or sunsetting of the recording and retention rules upon implementation of the RCC Act.[149] The Commission also asked whether it should instead "sunset the rules at a different point in time" or "instead retain the recording and retention rules without any sunset."[150]

44. We sunset the recording and retention rules as the burden of continuing to mandate that covered providers collect and retain data, especially as prescribed by those rules, outweighs any benefit or usefulness of the data. We agree with USTelecom that it makes "little sense for the Commission to continue to require providers to record and retain data that neither the Commission nor the carriers use, or find useful for analysis of, rural call completion issues."[151] Because the data as prescribed by the *First RCC Order* is not useful to covered providers in alleviating rural call completion issues, our recording and retention rules have placed covered providers in the position of maintaining one pre-packaged set of data for rural call completion rule compliance only[152] and possibly retaining another data set *actually* used by covered providers in operating their networks and remedying call completion issues via the covered provider monitoring rule.[153] We expect covered providers to dedicate all available resources to prevent and remedy call completion issues;[154] and, therefore, it is unnecessary for us to require covered providers to produce data unused in meeting these purposes.

45. We disagree with NTCA that maintaining the recording and retention rules will inform us of the efficiency of the monitoring requirements, intermediate provider service quality standards, and intermediate provider registry.[155] Because the monitoring rule permits covered providers "*flexibility* in determining and conducting prospective monitoring that is appropriate for their respective networks and mixes of traffic,"[156] mandating specific data collection metrics would stifle this flexibility, and would in practice, prescribe monitoring practices.

[147] *See Second RCC Order*, 33 FCC Rcd at 4226-27, paras. 62-64.

[148] *See, e.g.*, NTCA/WTA Aug. 28, 2017 Comments; CenturyLink Aug. 3. 2017 Comments; *see also Second RCC FNPRM*, 32 FCC Rcd 6047 at 6057-59. paras. 25-28 (seeking comment on recording, retention, and reporting requirements for covered providers).

[149] *See Third RCC FNPRM*, 33 FCC Rcd at 4238-39, paras. 109-110.

[150] *Id*. at 4238, para. 110.

[151] Letter from Kevin G. Rupy, Vice President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 2 (filed Oct. 4, 2018); *see also* Letter from Kevin G. Rupy, Vice President, Law & Policy, USTelecom, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 2 (filed Mar. 8, 2019) (arguing that the "collected data lacked any utility and was therefore never used by the Commission for its intended purposes); Letter from Matthew Gerst, Vice President, Regulatory Affairs, CTIA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39 (filed Mar. 6, 2019). For the same reason, we disagree with NTCA's argument that "the Commission should retain the record keeping requirement for covered providers until such time as there is an affirmative determination that the rules are effective and records are no longer necessary." *See* NTCA Mar. 7th *Ex Parte* Letter at 3.

[152] *See* Inteliquent Comments at 4.

[153] *See Second RCC Order*, 33 FCC Rcd at 4206-07, para. 1.

[154] *See, e.g.*, *Second RCC Order*, 33 FCC Rcd at 4205-13, paras. 16-30 (describing prospective, retrospective monitoring).

[155] *See* NTCA Reply at 7, 8.

[156] *Id*. at 4207, para. 18 (emphasis added).

46. We also disagree with NTCA's argument that eliminating the recording and retention rules "may lead to an increase in the number of intermediate providers being used in the call path for providers who now have a good record of completing calls."[157] We find it unlikely that covered providers with a good track record of completing calls would suddenly assume bad call completion practices, and risk violating the Commission's call completion rules, as a result of the removal of the recording and retention requirements. Nor does NTCA point to any evidence suggesting such an outcome.[158] Moreover, as we stated above and in the *Second RCC Order*, we believe that our intermediate provider service quality standards, the intermediate provider registry requirement, and the covered provider monitoring requirement will limit the number of providers in call paths.[159]

47. The *Third FNPRM* did not propose a sunset timeline for the recording and retention requirements, but suggested a period "such as three years" from the *Second RCC Order*.[160] Commenters in this proceeding have advocated that the recording and retention rules be eliminated upon effectiveness of our RCC Act implementing regulations,[161] or upon adoption of the service quality standards.[162] Despite the data quality issues discussed above, we find that immediate removal of the recording and retention rules could impact our ability to address rural call completion issues pending full implementation of the RCC Act requirements. We therefore find that a one-year sunset of the recording and retention rules will serve as a sufficient bridge between the Commission's previous recording and retention rules and the RCC Act regulations.[163]

48. This sunset period will allow covered and intermediate providers to come into full compliance with the rural call completion rules adopted pursuant to the RCC Act before the recording and retention requirements are removed. The *Third RCC Order* mandates that intermediate providers register "within 30 days after publication of a Public Notice announcing the approval by the Office of Management and Budget of the final rules establishing the registry," and covered providers have 90 days thereafter to only use registered intermediate providers.[164] And as discussed above, we grant intermediate providers a period of six months from the date that this Order is released by the Commission, or 30 days after publication of a summary of this Order in the Federal Register, whichever is later, to comply with our service quality standards. We therefore believe a one-year sunset period for the remaining recording and retention rules will provide a sufficient overlap between the new call completion rules and the Commission's previous data collection regime.

49. The recording and retention safe harbor[165] will also thus remain concurrently, without change, until the recording and retention requirements expire one year after the service quality standards are in effect. Accordingly, we sunset the remaining call data recording and retention requirements established in the *First RCC Order* one year after the effective date of the intermediate provider service

[157] NTCA Reply at 7.

[158] *Id*. For these same reasons, we disagree with NTCA's assertion that removal of the recording and retention rules will reduce the appeal of the safe harbor for covered providers and thereby lead to diminished rural call completion performance by safe harbor covered providers. *See* NTCA Mar. 7 *Ex Parte* Letter at 1-3. *See also* USTelecom March 8 *Ex Parte* Letter at 3 (noting that NTCA's assertion is "speculative").

[159] *See supra* para. 31.

[160] *Third RCC FNPRM*, 33 FCC Rcd at 4238, para. 110.

[161] *See* ITTA Comments at 7

[162] *See* MTA Sep. 25, 2017 Reply at 6

[163] *First RCC Order*, 28 FCC Rcd at 16164, para. 19.

[164] *Third RCC Order*, 33 FCC Rcd at 8408, 8416, paras. 19, 42.

[165] *See* 47 CFR § 61.2107.

quality standards. We also extend the application of the safe harbor to our newly adopted service quality standards for intermediate providers.[166]

E. Petitions for Reconsideration of *Second RCC Order*

1. NTCA Petition for Reconsideration

50. On June 11, 2018, NTCA filed a Petition for Reconsideration (Petition) of a portion of the *Second RCC Order*, requesting "that the Commission reevaluate and reconsider its decision to not require covered providers to file their documented rural call completion monitoring procedures with the Commission."[167] For the reasons listed below, we deny NTCA's Petition.

a. Background

51. In the *Second RCC Order*, the Commission instituted a covered provider monitoring requirement.[168] This monitoring requirement, which became effective October 17, 2018,[169] requires covered providers to prospectively and retrospectively monitor their contracted intermediate providers, and to document those monitoring processes,[170] "to ensure consistent prospective monitoring and facilitate Commission oversight."[171] The Commission declined to require covered providers to file or publish this monitoring process documentation, due to concerns about revealing "important technical, personnel, and commercial details about the covered provider's network and business operations," and a corresponding lack of any "countervailing benefit to warrant imposing" such a burden.[172] In addition to this Petition, NTCA previously submitted two near-identical *ex parte* presentations in April 2018.[173] The two *ex parte*s, identical in facts and argument to its Petition, requested "that the Commission require covered providers to file with the Commission their documented monitoring procedures," as filing of procedures imposes "no meaningful burden on covered providers, while offering greater transparency and certainty."[174]

b. Discussion

52. Our rules allow interested persons to file petitions for reconsideration of final actions in rulemaking proceedings, [175] and provides that petitions for reconsideration relying on "facts or arguments

[166] *See infra* Appendix A (new Section 64.2109).

[167] *See* NTCA Petition at 1 (citing *Second RCC Order*).

[168] *See Second RCC Order*, 33 FCC Rcd at 4204-05, para. 14.

[169] *See id.* at 4222, para. 50.

[170] *See id.* at 4205-07, 4210, paras. 15, 17, 23.

[171] *Id*. at 4206-07, para. 17.

[172] *Id*. at 4221, para. 46.

[173] *See generally* Letter from Jill Canfield, Vice President Legal & Industry, Assistant General Counsel, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39 (filed Apr. 5, 2018) (NTCA Apr. 5 *Ex Parte* Letter); *see also* Letter from Jill Canfield, Vice President Legal & Industry, Assistant General Counsel, NTCA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39 (filed Apr. 10, 2018) (NTCA Apr. 10 *Ex Parte* Letter).

[174] NTCA Apr. 5 *Ex Parte* Letter at 3-4. *Accord* NTCA Apr. 10 *Ex Parte* Letter at 2 ("If the Commission will not entertain NTCA's suggestion to mandate adherence to the best practices as an alternative to the current reporting requirements, NTCA requests at the very least then that the Commission require covered providers to file with the Commission their documented monitoring procedures along with contact information for call completion problems. The filing of procedures that are already 'expected' to be in written form imposes no meaningful burden on covered providers, while offering transparency and greater certainty.")

[175] *See* 47 CFR § 1.429(a); *cf. City of Peoria v. Gen. Elec. Cablevision Corp. (GECCO),* 690 F.2d 116, 119 (7th Cir. 1982) (stating rulemakings resulting in substantive rules are final orders for purposes of judicial review).

which have not previously been presented to the Commission will be granted" only under certain circumstances.[176] Where the petition presents no new facts or arguments, the Commission has full discretion to grant such petitions in "whole or in part or may deny or dismiss the petition."[177]

53. Although we agree that NTCA is an interested party to a final action, the Commission has already considered and rejected NTCA's arguments, and NTCA presents no new facts or arguments to explain why the Commission should reconsider its decision on covered provider monitoring documentation. As Sprint points out,[178] NTCA's Petition is a near verbatim restatement of the facts and arguments NTCA submitted in its two April 2018 *ex parte* filings that transparency and certainty compel the Commission to mandate that covered providers file their monitoring processes with the Commission.[179] Accordingly, because NTCA does not submit new facts or arguments, we have full discretion to grant or deny its Petition in whole or in part.

54. Under such discretionary authority, we deny the Petition.[180] Beyond its editorialization of our decisions, NTCA does not present new arguments or facts warranting a discretionary change in the Commission's decision to not require covered providers to file or publish their monitoring processes. NTCA specifically challenges the Commission's "conclusion" of expecting covered providers to document their monitoring procedures without requiring covered providers to file those procedures with the Commission "or otherwise make them publicly available."[181] The Commission indeed specifically and fully addressed NTCA's identical argument in the *Second RCC Order*.[182] We continue to reiterate that there is no "countervailing benefit sufficient to warrant imposing" the burden of filing monitoring processes,[183] as the Commission may obtain most information—including monitoring process information—pursuant to its investigatory authority into covered provider practices under the Communications Act.[184] Accordingly, we deny NTCA's Petition for Reconsideration in whole, pursuant to section 1.429(i) of our rules.

2. USTelecom Petition for Reconsideration

55. We also dismiss and deny a petition for reconsideration filed by USTelecom seeking review of rules adopted in the *Second RCC Order*.[185] Specifically, USTelecom requests reconsideration of certain aspects of the Commission's monitoring rules for covered providers.[186] As explained below, we

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[176] 47 CFR § 1.429(b).

[177] *Id*. § 1.429(i); *see also id*. § 1.429(b) (providing specific circumstances under which the Commission must grant petitions for reconsideration presenting new facts or arguments).

[178] Opposition of Sprint Corporation (filed Aug. 2. 2018) at 5-6.

[179] *Compare* NTCA Apr. 5 *Ex Parte* Letter at 3-4 (requesting the Commission require covered providers to file monitoring procedures for sake of transparency and certainty), *and* NTCA Apr. 10 *Ex Parte* Letter at 2-3 (same), *with, e.g.*, NTCA Petition at 7 (stating transparency as consideration in mandating covered providers file monitoring processes with Commission).

[180] *See* 47 CFR § 1.429(i).

[181] NTCA Petition at 6.

[182] *See Second RCC Order*, 33 FCC Rcd at 4221, para. 46 ("We further decline to require covered providers to file their documented monitoring procedures publicly with the Commission, as NTCA suggests." (citing NTCA Apr. 5 *Ex Parte* Letter at 2-3)).

[183] *See Second RCC Order*, 33 FCC Rcd at 4221, para. 46.

[184] *See, e.g.,* 47 U.S.C. §§ 218, 220(a), 403, 154(i).

[185] USTelecom – The Broadband Association Petition for Reconsideration, WC Docket No. 13-39 (filed June 11, 2018) (USTelecom Petition).

[186] USTelecom Petition at 1-2.

dismiss the Petition as it relies on arguments already considered and rejected by the Commission in the *Second RCC Order,* and we reaffirm our findings that the monitoring rule appropriately balances the burdens our rules impose on covered providers with the need to address ongoing rural call completion issues. Moreover, the Commission's adoption of the monitoring rule is supported by the record in this proceeding and consistent with the provisions of the RCC Act.[187]

a. Background

56. On June 11, 2018, USTelecom filed a petition for reconsideration of certain aspects of the covered provider monitoring rule adopted in the *Second RCC Order*.[188] The *Second RCC Order* adopted a requirement, codified at 47 CFR § 64.2111, that covered providers monitor the performance of the intermediate providers to which they hand off calls, and, based on the results of such monitoring, take steps reasonably calculated to correct any identified performance problems with downstream intermediate providers.[189] The *Second RCC Order* indicated that, under the monitoring rule, "a covered provider is accountable for monitoring the performance of any intermediate provider with which it contracts, including that intermediate provider's decision as to whether calls may be handed off to additional downstream intermediate providers . . . and whether it has taken sufficient steps to ensure that calls will be completed post-handoff."[190] In order to comply with their obligations under the monitoring rule, the *Second RCC Order* afforded covered providers the flexibility to manage the call path through "(i) direct monitoring of all intermediate providers or (ii) a combination of direct monitoring of contracted intermediate providers and contractual restrictions on directly monitored intermediate providers that are reasonably calculated to ensure rural call completion through the responsible use of any further intermediate providers."[191]

57. USTelecom seeks reconsideration of the requirement that covered providers exercise responsibility for the call completion performance of downstream intermediate providers with which there is no direct contractual relationship, arguing that this requirement "poses severe practical issues" and "creates an unreasonable compliance trap for originating providers."[192] NCTA – The Internet & Television Association (NCTA) and ITTA – The Voice of America's Broadband Providers (ITTA) filed comments in support of USTelecom's petition for reconsideration,[193] while NTCA – The Rural Broadband Association filed comments in opposition.[194]

b. Discussion

58. As an initial matter, we note that the Petition and supporting commenters rely on several substantive arguments previously submitted to the Commission prior to the adoption of the monitoring rule. Under Section 1.429 of the Commission rules, petitions which "[r]ely on arguments that have been fully considered and rejected by the Commission within the same proceeding" "plainly do not warrant

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[187] *Second RCC Order*, 33 FCC Rcd at 4205-06, paras. 16-18.

[188] USTelecom Petition at 1-2.

[189] *Second RCC Order*, 33 FCC Rcd at 4214-16, para. 34.

[190] *Id*.

[191] *Id*.

[192] USTelecom Petition at 6.

[193] Comments of NCTA – The Internet & Television Association, WC Docket No. 13-39 (filed Aug. 2, 2018) (NCTA Aug. 2, 2018 Comments); Comments, Opposition, and Reply of ITTA – The Voice of America's Broadband Providers, WC Docket No. 13-39 (filed Aug. 2, 2018) (ITTA Aug. 2, 2018 Comments).

[194] Opposition of NTCA – The Rural Broadband Association to Petition for Reconsideration of USTelecom, WC Docket No. 13-39 (filed June 20, 2018) (NTCA Opposition).

consideration by the Commission" and may be dismissed or denied.[195]

59. As one of their primary arguments for reconsideration, USTelecom, NCTA, and ITTA claim that compliance with the monitoring rule necessitates modification of existing vendor agreements, which, they allege, "poses severe practical issues."[196] However, as NTCA observes, "this same argument was raised in the notice-and-comment phase of the rulemaking and rightly and squarely rejected by the Commission."[197] In the *Second RCC Order*, we considered, and rejected, the argument that covered providers could not, or should not, bear any responsibility for the performance of non-contracted intermediate carriers.[198] The Commission also recognized that "covered providers will need some time to evaluate and renegotiate contracts with intermediate providers in order to comply with the monitoring requirement."[199] For this reason, we established a six-month transition period for covered providers to come into compliance with our rules.[200] We therefore dismiss these arguments as having previously been considered by the Commission.[201]

60. Although USTelecom claims that "many originating providers will be unable to modify their vendor agreements" because "revisions [to contracts] can generally be made only during the vendor contract renewal terms," it offers no evidence to support these assertions, nor do any other commenters supporting the Petition.[202] On the contrary, as NTCA notes, the *Second RCC Order* offered covered providers "ample time to establish the contractual provisions necessary" to comply with the monitoring rule, and, in any event, any covered provider unable to comply after this time has the option to request a waiver of our rules provided it can demonstrate good cause warranting grant of such relief.[203]

61. We also disagree with ITTA's assertion that the monitoring rule "[c]ontravene[s] the RCC Act" because it "fl[ies] in the face of the statutory balancing crafted by Congress."[204] ITTA has previously advanced similar arguments in this proceeding, which we rejected in the *Second RCC Order*.[205] As we have explained, "passage of the RCC Act does not obviate the need for covered provider regulation,"[206] and our monitoring rule "complements, but exists independently of, the registry and service quality obligations contained in the RCC Act."[207]

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[195] *See* 47 CFR § 1.429(l).

[196] *See* USTelecom Petition at 6; *see also* ITTA Aug. 2, 2018 Comments at 6; NCTA Aug. 2, 2018 Comments at 3.

[197] NTCA Opposition at 3. *See also Second RCC Order*, 33 FCC Rcd at 4215-16, para. 34 n.115.

[198] *Second RCC Order*, 33 FCC Rcd at 4216, para. 35.

[199] *Id*. at 4222, para. 50.

[200] *Id*.

[201] Similarly, we dismiss related arguments advanced by USTelecom, ITTA, and NCTA concerning whether "direct" monitoring of intermediate providers with which there is no contractual relationship is feasible. These arguments were likewise considered, and rejected, by the Commission in the *Second RCC Order*. *See id*. at 4215-16, para. 34, n.115.

[202] *See* USTelecom Petition at 6; NCTA Aug. 2, 2018 Comments at 3 (arguing that compliance will require "substantial renegotiation of virtually all existing contracts"); ITTA Aug. 2, 2018 Comments at 5-6.

[203] NTCA Opposition at 4; *see also Rural Call Completion*, Order, 33 FCC Rcd 3887 (WCB 2018) (RCC covered provider filing waiver).

[204] ITTA Aug. 2, 2018 Comments at 7.

[205] *See Second RCC Order*, 33 FCC Rcd at 4206, para. 16, n.49.

[206] *See id*. at 4206, para. 16.

[207] *Third RCC Order*, 33 FCC Rcd at 8420, para. 55.

62. ITTA argues that the RCC Act's adoption of service quality and registry standards for intermediate providers suggests that Congress intended to focus responsibility for call completion issues predominantly or entirely on intermediate providers.[208] We disagree. ITTA's arguments suggest a fundamental misreading of the RCC Act and its relationship to existing Commission rules and precedent concerning rural call completion issues. Had Congress intended to shield covered providers from rural call completion rules, it could easily have done so in the RCC Act. Contrary to ITTA's suggestion, however, the RCC Act recognized and approved of the Commission's efforts to hold covered providers accountable for rural call completion issues, and granted the Commission additional authority to support a complementary regulatory regime for intermediate providers. Specifically, in passing the RCC Act, Congress repeatedly referenced the Commission's regulation of covered providers, both in the text of the Act and the accompanying legislative history,[209] noting that the Commission was free to model its service quality standards for intermediate providers on the "general . . . duties to complete calls" that apply to covered providers.[210] These duties, implicitly endorsed by Congress, include those described in the *2012 Declaratory Ruling*, which clarified that "a carrier remains responsible for the provision of service to its customers even when it contracts with another provider to carry the call to its destination."[211] As we explained in the *Second RCC Order*, these same obligations form the basis of the monitoring rule for covered providers.[212]

63. ITTA also argues that the Commission's finding in the *Second RCC Order* that covered providers are able to use pass-through contractual restrictions to ensure call completion is "[u]nsupported by the [r]ecord."[213] We disagree.[214] Indeed, ITTA's own comments point to relevant record support for this finding, including, as described by ITTA: "[A] reference to third-party vendors performing monitoring; a suggested best practice whereby contractual agreements can be used to ensure that intermediate providers meet performance standards and hold other intermediate providers accountable for performance; and one commenter stating that its direct contracts with intermediate providers stipulate that the intermediate provider may use no more than one additional intermediate provider before the call is terminated."[215] In its comments, ITTA summarily dismisses this record support based on the assertion that it does not constitute "actual evidence."[216] ITTA provides no analysis or elaboration whatsoever to support this claim; however, insofar as ITTA makes an argument that the monitoring rule lacks record support, we disagree.[217] The record evidence in this proceeding demonstrates that covered providers can,

(Continued from previous page)

[208] ITTA Aug. 2, 2018 Comments at 11.

[209] *See* 42 U.S.C. § 262(h)-(i); Senate Commerce Committee Report at 6; *see also Third RCC Order*, 33 FCC Rcd at 8403-04, para. 9; *Third RCC FNPRM*, FCC 18-120, para. 85.

[210] Senate Commerce Committee Report at 6.

[211] *2012 Declaratory Ruling*, 27 FCC Rcd at 1355-56, paras. 11-12.

[212] *See Second RCC Order*, 33 FCC Rcd at 4210-11, paras. 24-25.

[213] ITTA Aug. 2, 2018 Comments at 6-7.

[214] As we found in the *Second RCC Order*, the covered provider monitoring rule enjoys significant record support. *See Second RCC Order*, 33 FCC Rcd at 4204-07, 4215-16, paras. 14-18, 34-35.

[215] ITTA Aug. 2, 2018 Comments at 7.

[216] *See* ITTA Aug. 2, 2018 Comments at 7.

[217] We also disagree with ITTA's contention that the *Second RCC Order* is "rife with potential confusion." ITTA Aug. 2, 2018 Comments at 7-9. ITTA's argument appears to rest on its assertion that the *Second RCC Order* "cobbl[es] together three things that it 'encourage[s]' into a *de facto* requirement." *Id*. However, as the *Second RCC Order* makes clear, none of the specific practices referenced by ITTA—including "adherence to the ATIS RCC Handbook," "limit[ing] the number of intermediate providers in the call chain," and incorporation of examples of contractual provisions that ensure quality call completion—are required. *Id*. To the contrary, while covered

(continued….)

and do, utilize contractual restrictions to ensure call completion by downstream intermediate providers, including those with which there is no direct contractual relationship.[218] For these reasons, we affirm our finding that the monitoring rule is supported by the record in this proceeding.

64. For the foregoing reasons, to the extent that USTelecom and commenters supporting its Petition rely on arguments concerning the costs associated with contractual negotiations that may be necessitated by the monitoring rule, we dismiss these arguments as having been previously considered and rejected by the Commission.[219] To the extent that the Petition and supporting comments raise novel arguments in this proceeding, we dismiss these arguments on the merits, as discussed above.

IV. PROCEDURAL MATTERS

65. *Final Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act of 1980, *see* 5 U.S.C. § 604, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules, as proposed, addressed in this *Fourth Report and Order*. The FRFA is set forth in Appendix B. The Commission will send a copy of this *Fourth Report and Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

66. *Paperwork Reduction Act*. As the Commission is hereby sunsetting the remaining rural call completion data recording and retention requirements,[220] thereby eliminating an information collection in its entirety, this *Fourth Report and Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

67. *Congressional Review Act.* The Commission will send a copy of this *Fourth Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

68. *Contact Person.* For further information about this rulemaking proceeding, please contact Zach Ross, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C211, 445 12th Street, S.W., Washington, D.C. 20554, at (202) 418-1033 or Zachary.Ross@fcc.gov.

(Continued from previous page)
providers "must exercise responsibility for the performance of the entire intermediate provider call path to help ensure that calls to rural areas are completed," the *Second RCC Order* grants covered providers "flexibility in how they fulfill this responsibility" allowing each to "determine the standards and methods best suited to their individual networks." *Second RCC Order*, 33 FCC Rcd at 4214, para. 34.

[218] *See, e.g.*, *Second RCC Order*, 33 FCC Rcd at 4215, para. 34 n.114 (citing Verizon's statement that it requires intermediate providers to "agree to utilize no more than one additional carrier in routing before the call is delivered to the RLEC or the tandem for termination"); Letter from Matt Nodine, Asst. V.P. Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 13-39, at 2 (filed July 25, 2017) (safe harbor certification attesting to contractually limiting the number of intermediate providers).

[219] *See* 47 CFR § 1.429(l)(3).

[220] For a description of the rural call completion Paperwork Reduction Act information collection, refer to OMB Control Number 3060-1186, available at Office of Information & Regulatory Affairs, Office of Mgmt. & Budget, Exec. Office of the President, OMB Control Number History, https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3060-1186 (OMB Control Number 3060-1186).

V. ORDERING CLAUSES

69. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 201(b), 202(a), 217, and 262 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201(b), 202(a), 217, and 262, this *Fourth Report and Order* IS ADOPTED.

70. IT IS FURTHER ORDERED that Part 64 of the Commission's rules ARE AMENDED as set forth in Appendix A.

71. IT IS FURTHER ORDERED that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR §§ 1.4(b)(1), 1.103(a), this *Fourth Report and Order* SHALL BE EFFECTIVE 30 days after publication of a summary in the Federal Register.

72. IT IS FURTHER ORDERED that pursuant to the authority contained in sections 1, 4(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 262 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 262, NTCA's Petition for Reconsideration filed on June 11, 2018 in WC Docket No. 13-39 is DENIED.

73. IT IS FURTHER ORDERED that pursuant to the authority contained in sections 1, 4(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 262 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201(b), 202(a), 217, 218, 220(a), 251(a), and 262, USTelecom's Petition for Reconsideration filed on June 11, 2018 in WC Docket No. 13-39 is DENIED.

74. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *Fourth Report and Order* to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

75. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Fourth Report and Order*, including the Final Regulatory Flexibility Analysis and Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

Final Rules

The Federal Communications Commission amends Part 64 of Title 47 of the Code of Federal Regulations as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 remains as follows:

Authority: 47 U.S.C. §§ 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, 1401-1473, unless otherwise noted.

2. Amend reserved section 64.2105 to read as follows:

§ 64.2105 Recording, retention, and Safe Harbor sunset provision.

(a) *Effective date*. One year after the effective date of section 64.2119 of this subpart, as measured upon publication in the Federal Register, section 64.2103, Retention of call attempt records, and section 64.2107, Reduced recording and retention requirements for qualifying providers under the Safe Harbor, shall become null and void.

(b) *Notice*. The Commission shall provide public notice of the beginning of the one year sunset period. The Commission shall also publish a notice in the Federal Register at least 60 days before the end of the sunset period.

(c) *Effects of sunset provision*. Sections 64.2103, and 64.2107 shall be deemed to have no effect at the end of the one year period and shall be considered removed from this subpart. All other sections in this subpart will be unaffected and will continue to have full effect after the sunset period. Section 64.2109 of this subpart shall be considered to be the successor regulation to section 64.2107.

3. Amend reserved section 64.2109 to read as follows:

§ 64.2109 Safe Harbor from Intermediate Provider Service Quality Standards.

(a)(1) A covered provider may qualify as a safe harbor provider under this subpart if it files one of the following certifications, signed under penalty of perjury by an officer or director of the covered provider regarding the accuracy and completeness of the information provided, in WC Docket No. 13–39:

"I ___ (name), ___ (title), an officer of ___ (entity), certify that ___ (entity) uses no intermediate providers;" or

"I ___ (name), ___ (title), an officer of ___ (entity), certify that ___ (entity) restricts by contract any intermediate provider to which a call is directed by ___ (entity) from permitting more than one additional intermediate provider in the call path before the call reaches the terminating provider or terminating tandem. I certify that any nondisclosure agreement with an intermediate provider permits ___ (entity) to reveal the identity of the intermediate provider and any additional intermediate provider to the Commission and to the rural incumbent local exchange carrier(s) whose incoming long-distance calls are affected by the intermediate provider's performance. I certify that ___ (entity) has a process in place to monitor the performance of its intermediate providers."

(2) The certification in paragraph (a)(1) must be submitted:

(A) for the first time on or before February 26, 2019; and

(B) annually thereafter.

(b) The requirements of section 64.2119 shall not apply to intermediate provider traffic transmitted by safe harbor qualifying covered providers functioning as intermediate providers.

4. Add section 64.2119 to subpart V to read as follows:

§ 64.2119 Intermediate Provider Service Quality Standards.

Any intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission must abide by the following service quality standards:

(a) *Duty to Complete Calls*. Intermediate providers must take steps reasonably calculated to ensure that all covered voice communications that traverse their networks are delivered to their destination. An intermediate provider may violate this duty to complete calls if it knows, or should know, that calls are not being completed to certain areas, and it engages in acts or omissions that allow, or effectively allow, these conditions to persist.

(b) *Rural Call Completion Performance Monitoring.* For each intermediate provider with which it contracts, an intermediate provider shall:

(1) Monitor the intermediate provider's performance in the completion of call attempts to rural telephone companies; and

(2) Based on the results of such monitoring, take steps that are reasonably calculated to correct any identified performance problem with the intermediate provider, including removing that provider for sustained poor performance.

(c) *Registration of Subsequent Intermediate Providers*. Intermediate providers shall ensure that any additional intermediate providers to which they hand off calls are registered with the Commission pursuant to section 64.2115 of the Commission's rules.

APPENDIX B

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated into the *Third Further Notice of Proposed Rulemaking* (*Third RCC FNPRM*) for the Rural Call Completion proceeding.[2] The Commission sought written public comment on the proposals in the *Third RCC FNPRM*, including comment on the IRFA. The Commission received no comments on the IRFA. Because the Commission amends its rules in this *Fourth Report and Order* (*Order*), the Commission has included this Final Regulatory Flexibility Analysis (FRFA). This present FRFA conforms to the RFA.[3]

A. Need for, and Objectives of, the Proposed Rules

2. In this *Order*, we revise our rules to continue to address ongoing problems in completion of long-distance calls. Specifically, we establish intermediate provider service quality standards; modify the covered provider safe harbor, and sunset call data recording and retention requirements. These actions further implement the Improving Rural Call Quality and Reliability Act of 2017 (RCC Act),[4] and to continue "to ensure the integrity of voice communications and to prevent unjust or unreasonable discrimination among areas of the United States in the delivery of such communications."[5]

3. First, we establish service quality standards for intermediate providers.[6] Specifically, we require intermediate providers to take steps reasonably calculated to ensure that any calls that they handle are in fact completed. If an intermediate provider knows, or should know, that calls are not being completed to certain areas, the intermediate provider may be in violation of this general duty if it engages in acts or omissions that allow or effectively allow these conditions to persist. Intermediate providers must also ensure that any additional intermediate providers to which they hand off calls are registered with the Commission.

4. In addition, with respect to traffic destined for rural areas, intermediate providers must actively monitor the performance of any directly contracted downstream intermediate provider and, based on the results of such monitoring, take steps to address any identified performance issues with that provider. The Commission believes these rules will effectuate Congress's intent in passing the RCC Act, and further the Commission's efforts to ensure that all calls to rural areas are completed.

5. Due to the variety of providers and network technologies that may be subject to the Commission's service quality standards, the rules set forth in the *Order* grant intermediate providers compliance flexibility, thereby benefitting businesses of all sizes and their subscribers. The Order's intermediate provider service quality standards parallel those already applicable to covered providers

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[1] *See* 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 845 (1996).

[2] *See Rural Call Completion*, Third Further Notice of Proposed Rulemaking, FCC 18-45, Appx. E (2018) (*Third RCC FNPRM*).

[3] *See* 5 U.S.C. § 604.

[4] Improving Rural Call Quality and Reliability Act of 2017, Pub. L. No. 115-129, 123 Stat. 329 (2018) (codified at 47 U.S.C. § 262) ("RCC Act").

[5] *Id.* at Preamble.

[6] *See* 47 U.S.C. § 262(c)(1)(B).

under the *Second RCC Order* and earlier Commission orders and rulings,[7] ensuring the Commission's rules effectively address rural call completion issues while also avoiding unnecessary compliance burdens on intermediate providers—particularly those that serve dual roles as both covered and intermediate providers.

6. Second, we add a covered provider safe harbor to comply with the RCC Act. The service quality standards adopted in the *Order*—pursuant to the RCC Act—apply only to intermediate providers. However, the RCC Act's exemption is limited to covered providers.[8] The *Order* therefore clarifies that covered providers qualifying for the safe harbor on or before February 26, 2019 will be exempt from the intermediate provider service quality rules when serving as intermediate providers, provided they maintain their safe harbor certification with the Commission. Though the *Order* maintains the three preexisting safe harbor requirements without change, and retains the existing recording and retention safe harbor until those requirements expire, it adds Section 64.2109 to add the application of the safe harbor to the *Order's* newly adopted service quality standards for intermediate providers.[9]

7. Third, as proposed by the *Third RCC FNPRM*,[10] we sunset the covered provider call data recording and retention requirements the Commission established in 2013,[11] thus eliminating these requirements one year after the effective date of the service quality standards adopted in this *Order*. We conclude that that the existing recording and retention rules are burdensome on covered providers, and the resulting data, as previously prescribed by the Commission, are of limited utility to us in discovering the source of rural call completion problems. We further conclude that a voluntary recording and retention scheme, using the metrics chosen by individual covered providers, will serve to best inform covered providers and the Commission of rural call completion issues and the best pathway to their resolution. As this will serve to effectively remove an information collection burden from all size businesses, small businesses should benefit from a removed information collection and retention burden as well.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

8. The Commission did not receive comments specifically addressing the rules and policies proposed in the IRFA.

C. Response to Comment by the Chief Counsel for Advocacy of the Small Business Administration

9. The Chief Counsel did not file any comments in response to this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

10. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the NPRM seeks comment, if adopted.[12] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental

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[7] *See, e.g.*, *Second RCC Order*, 33 FCC Rcd 4199, *First RCC Order*, 28 FCC Rcd at 16154; *2012 Declaratory Ruling*, 27 FCC Rcd 1351.

[8] *See* 47 U.S.C. § 262(h); 47 CFR § 64.2107.

[9] *See Order* Section III.D.

[10] *Third RCC FNPRM,* 33 FCC Rcd at 4238, para. 109.

[11] *See* 47 CFR § 64.2103; *see also Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16174-184, paras. 40-64 (2013).

[12] *See* 5 U.S.C. § 603(b)(3).

jurisdiction."[13] In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.[14] A "small-business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.[15]

11. *Small Businesses, Small Organizations, Small Governmental Jurisdictions*. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein.[16] First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.[17] These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.[18] Next, the type of small entity described as a "small organization" is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[19] Nationwide, as of 2007, there were approximately 1,621,215 small organizations.[20] Finally, the small entity described as a "small governmental jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand."[21] U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States.[22] We estimate that, of this total, as many as 88,761 entities may qualify as "small governmental jurisdictions."[23] Thus, we estimate that most governmental jurisdictions are small.

12. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as "establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using

[13] *See* 5 U.S.C. § 601(6).

[14] 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

[15] *See* 15 U.S.C. § 632.

[16] *See* 5 U.S.C. § 601(3)-(6).

[17] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 1 – What is a small business?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

[18] *See* SBA, Office of Advocacy, "Frequently Asked Questions, Question 2- How many small businesses are there in the U.S.?" https://www.sba.gov/sites/default/files/advocacy/SB-FAQ-2016_WEB.pdf (June 2016).

[19] 5 U.S.C. § 601(4).

[20] Independent Sector, The New Nonprofit Almanac & Desk Reference (2010).

[21] 5 U.S.C. § 601(5).

[22] U.S. Census Bureau, Statistical Abstract of the United States: 2012 at 267, Table 428 (2011), http://www2.census.gov/library/publications/2011/compendia/statab/131ed/2012-statab.pdf (citing data from 2007).

[23] The 2012 U.S. Census Bureau data for small governmental organizations are not presented based on the size of the population in each organization. There were 89,476 local governmental organizations in the Census Bureau data for 2012, which is based on 2007 data. As a basis of estimating how many of these 89,476 local government organizations were small, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000 in 2011. *See* U.S. Census Bureau, City and Town Totals Vintage: 2011, http://www.census.gov/popest/data/cities/totals/2011/index.html. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small.

wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry."[24] The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees.[25] Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[26] Thus, under this size standard, the majority of firms in this industry can be considered small.

13. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[27] According to Commission data, census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[28] The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

14. *Incumbent LECs.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.[29] According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees.[30] Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers.[31] Of this total, an estimated 1,006 have 1,500 or fewer employees.[32]

15. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the

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[24] U.S. Census Bureau, *NAICS Search*, http://www.census.gov/cgi-bin/sssd/naics/naicsrch (last visited June 21, 2017)

[25] 13 CFR § 121.201 (NAICS Code 517110).

[26] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[27] 13 CFR § 121.201 (NAICS Code 517110).

[28] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[29] 13 CFR § 121.201 (NAICS Code 517110).

[30] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[31] *See* Fed. Commc'ns Comm'n*, Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[32] *Id*.

Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees.[33] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[34] Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services.[35] Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees.[36] In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees.[37] Also, 72 carriers have reported that they are Other Local Service Providers.[38] Of this total, 70 have 1,500 or fewer employees.[39] Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

16. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[40] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[41] We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

17. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[42] U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees.[43] According to internally

[33] 13 CFR § 121.201 (NAICS Code 517110).

[34] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016) http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[35] *See* Fed. Commc'ns Comm'n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[36] *Id*.

[37] *Id*.

[38] *Id*.

[39] *Id*.

[40] 5 U.S.C. § 601(3).

[41] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (filed May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." 15 U.S.C. § 632(a); 5 U.S.C. § 601(3). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR § 121.102(b).

[42] 13 CFR § 121.201 (NAICS Code 517110).

[43] *See* U.S. Census Bureau, American Fact Finder (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services.[44] Of this total, an estimated 317 have 1,500 or fewer employees.[45] Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

18. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.[46] Under that size standard, such a business is small if it has 1,500 or fewer employees.[47] Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees.[48] Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

19. *Toll Resellers.* The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry.[49] The SBA has developed a small business size standard for the category of Telecommunications Resellers.[50] Under that size standard, such a business is small if it has 1,500 or fewer employees.[51] Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees.[52] Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services.[53] Of this total, an estimated 857

[44] *See* Fed. Commc'ns Comm'n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[45] *Id*.

[46] U.S. Census Bureau, *2012 NAICS Definition*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012 (last visited June 20, 2017).

[47] 13 CFR § 121.201 (NAICS code 517911).

[48] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[49] U.S. Census Bureau, *2012 NAICS Definition*, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=517911&search=2012+NAICS+Search&search=2012 (last visited June 20, 2017) (NAICS 517911 Telecommunications Resellers).

[50] 13 CFR § 121.201 (NAICS code 517911).

[51] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[52] *Id*.

[53] Fed. Commc'ns Comm'n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

have 1,500 or fewer employees.[54] Consequently, the Commission estimates that the majority of toll resellers are small entities.

20. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees.[55] Census data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees.[56] Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage.[57] Of these, an estimated 279 have 1,500 or fewer employees.[58] Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to this *Order*.

21. *Prepaid Calling Card Providers*. The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees.[59] According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards.[60] The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

22. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services.[61] The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees.[62] For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year.[63] Of this total, 955 firms had employment of 999 or fewer

[54] *Id*.

[55] 13 CFR § 121.201 (NAICS code 517110).

[56] *See* U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table.

[57] Fed. Commc'ns Comm'n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[58] *Id*.

[59] 13 CFR § 121.201 (NAICS code 517110).

[60] *See* Fed. Commc'ns Comm'n, *FCC Form 499 Filer Database*, http://apps.fcc.gov/cgb/form499/499a.cfm (Mar. 22, 2018).

[61] *See* U.S. Census Bureau, *American Fact Finder—About the Data*, https://factfinder.census.gov/faces/affhelp/jsf/pages/metadata.xhtml?lang=en&type=ib&id=ib.en./ECN.NAICS2012.517210 (NAICS Code 517210).

[62] 13 CFR § 121.201 (NAICS code 517210).

[63] U.S. Census Bureau, *American Fact Finder* (Jan 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prod

(continued….)

employees and 12 had employment of 1000 employees or more.[64] Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

23. The Commission's own data—available in its Universal Licensing System—indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today.[65] The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services.[66] Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.[67] Thus, using available data, we estimate that the majority of wireless firms can be considered small.

24. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years.[68] The SBA has approved these definitions.[69]

25. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite).[70] Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees.[71] According to Commission data, 413 carriers reported that they were engaged in wireless telephony.[72] Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees.[73] Therefore, a little less than one third of these entities can be considered small.

(Continued from previous page)
Type=table (NAICS 51720, "Subject Series - Estab & Firm Size: Employment Size of Establishments for the U.S.: 2012").

[64] *Id*. Available census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with "1000 employees or more."

[65] *See* Fed. Commc'ns Comm'n, *Universal Licensing System*, http://wireless.fcc.gov/uls (last visited Mar. 22, 2018). For the purposes of this IRFA, consistent with Commission practice for wireless services, the Commission estimates the number of licensees based on the number of unique FCC Registration Numbers.

[66] *See* Fed. Commc'ns Comm'n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[67] *See id*.

[68] *Amendment of the Commission's Rules to Establish Part 27, the Wireless Communications Service (WCS)*, Report and Order, 12 FCC Rcd 10785, 10879, para. 194 (1997).

[69] *See* Letter from Aida Alvarez, Administrator, SBA, to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC (filed Dec. 2, 1998) (*Alvarez Letter 1998*).

[70] 13 CFR § 121.201 (NAICS code 517210).

[71] *Id*.

[72] Fed. Commc'ns Comm'n, *Trends in Telephone Service*, 5-5, tbl. 5.3 (Sept. 2010) (*Trends in Telephone Service*), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301823A1.pdf.

[73] *Id*.

26. *Cable and Other Subscription Programming.* This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g. limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.[74] The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees.[75] The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees.[76] Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

27. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.[77] Industry data indicate that there are currently 4,600 active cable systems in the United States.[78] Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard.[79] In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers.[80] Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records.[81] Thus, under this standard as well, we estimate that most cable systems are small entities.

28. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[82] There are approximately 52,403,705 cable video subscribers in the United States today.[83] Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not

[74] *See* U.S. Census Bureau, 2012 NAIC Definition, https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=515210&search=2012+NAICS+Search&search=2012 (last visited June 20, 2017) (2012 NAICS code, "515210 Cable and Other Subscription Programming") .

[75] 13 CFR § 121.201 (NAICSs Code 515210).

[76] *See* U.S. Census Bureau, *American Fact Finder* (Jan 08, 2016), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ2&prodType=table (NAICS code 51510, "Estab & Firm Size: Employment Size of Establishments for the U.S.").

[77] 47 CFR § 76.901(e).

[78] This figure was derived from a August 15, 2015 report from the FCC Media Bureau, based on data contained in the Commission's Cable Operations and Licensing System (COALS). *See* http://www.fcc.gov/coals (last visited Mar. 22, 2018).

[79] Data obtained from SNL Kagan database on April 19, 2017.

[80] 47 CFR § 76.901(c).

[81] August 5, 2015 report from the FCC Media Bureau based on its research in COALS. *See* Fed. Commc'ns Comm'n, *COALS CF WebSite*, http://www.fcc.gov/coals (Cable Operations and Licensing System).

[82] 47 CFR § 76.901(f) & nn.1-3.

[83] *See* SNL Kagan at http://www.snl.com/interactivex/MultichannelIndustryBenchmarks.aspx (subscription required).

exceed $250 million in the aggregate.[84] Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard.[85] We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million.[86] Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

29. *All Other Telecommunications.* **"**All Other Telecommunications" is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.[87] The SBA has developed a small business size standard for "All Other Telecommunications," which consists of all such firms with gross annual receipts of $32.5 million or less.[88] For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than $25 million.[89] Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

30. In implementing the RCC Act, first, the *Order* establishes service quality standards for intermediate providers.[90] Specifically, it requires intermediate providers to take steps reasonably calculated to ensure that any calls that they handle are in fact completed. Due to the variety of providers and network technologies that may be subject to the Commission's service quality standards, the rules set forth in the *Order* grant intermediate providers compliance flexibility, thereby benefitting subscribers and entities of all sizes.

31. Second, the *Order* modifies the covered provider safe harbor to comply with the RCC Act. The service quality standards adopted in the *Order*—pursuant to the RCC Act—apply only to intermediate providers. However, the RCC Act's exemption is limited to covered providers.[91] The *Order* therefore clarifies that covered providers qualifying for safe harbor on or before February 26, 2019 will be

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[84] 47 CFR § 76.901(f) & nn.1-3.

[85] *See* SNL Kagan at http://www.snl.com/interactivex/TopCable MSOs.aspx (subscription required).

[86] The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to section 76.901(f) of the Commission's rules. *See* 47 CFR § 76.901(f).

[87] U.S. Census Bureau, *NAICS Search*, http://www.census.gov/cgi-bin/sssd/naics/naicsrch (last visited June 21, 2017) (enter 2012 NAICS code 517919).

[88] 13 CFR § 121.201 (NAICS Code 517919).

[89] U.S. Census Bureau, *American Fact Finder* (Jan. 08, 2016), http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2012_US_51SSSZ4&prodType=table (2012 NAICS Code 517919, "Estab & Firm Size: Receipts Size of Firms for the U.S.").

[90] *See* 47 U.S.C. § 262(c)(1)(B).

[91] *See* 47 U.S.C. § 262(h); 47 CFR § 64.2107.

exempt from the intermediate provider service quality rules when serving as intermediate providers, provided they maintain their safe harbor certification with the Commission. Though the *Order* maintains the three preexisting safe harbor requirements without change, it modifies Section 64.2107 to reflect removal of the remaining data recording and retention requirements originally associated with the safe harbor, and the application of the safe harbor to the *Order's* newly adopted service quality standards for intermediate providers.[92] Until the intermediate provider registry is established pursuant to the RCC Act, it is unknown to the Commission at this time the number of any size entities affected by this regulation.

32. The *Order* sunsets the remaining covered provider call data recording and retention requirements the Commission established in 2013,[93] thus eliminating these requirements one year after the service quality standards in this *Order* become effective. As this will serve to effectively remove any information collection burden from all size entities, small entities should benefit from a removed information collection and retention burden as well.

F. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

33. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.[94]

34. In the *Order*, the Commission establishes intermediate provider service quality standards, modifies the covered provider safe harbor, and sunsets call data recording and retention. The Commission also directs the Wireline Competition Bureau to seek comment, one year from the effective date of the intermediate provider service quality standards, on the effectiveness of those standards in addressing rural call completion issues.

35. As the RCC Act mandates, this *Order* first adopts service quality standards for intermediate providers.[95] Specifically, we require intermediate providers to take steps reasonably calculated to ensure that any calls that they handle are in fact completed. If an intermediate provider knows, or should know, that calls are not being completed to certain areas, the intermediate provider may be in violation of this general duty if it engages in acts or omissions that allow or effectively allow these conditions to persist. Intermediate providers must also establish processes to monitor their rural call completion performance and ensure that any additional intermediate providers to which they hand off calls are registered with the Commission.

36. One alternative considered—and declined—is mandating compliance with the with the three ATIS best practices as proposed in the *Third RCC FNPRM*, and instead adopt a set of flexible

[92] *See Order* Section III.D.

[93] *See* 47 CFR § 64.2103; *see also Rural Call Completion*, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16174-184, paras. 40-64 (2013).

[94] 5 U.S.C. § 603(c).

[95] The RCC Act requires intermediate providers that offer, or hold themselves out as offering, the capability to transmit "covered voice communications" from one destination to another, and that charge any rate to any other entity for the transmission, to comply with "service quality standards" to be established by the Commission. *See* 47 U.S.C. § 262(a)(2).

standards for intermediate providers based on our rules for covered providers.[96] We agree with commenters who argue that mandating compliance with the three ATIS best practices may be impractical or unduly burdensome for some intermediate providers, particularly those relying on older network technologies to provide service.[97] However, the Commission will treat intermediate provider compliance with the ATIS best practices as a safe harbor demonstrating compliance with our service quality standards for intermediate providers of all sizes.

37. Second, we add the covered provider safe harbor to comply with the RCC Act. The service quality standards adopted in the *Order*—pursuant to the RCC Act—apply only to intermediate providers. However, the RCC Act's exemption is limited to covered providers.[98] The *Order* therefore clarifies that covered providers qualifying for safe harbor on or before February 26, 2019 will be exempt from the intermediate provider service quality rules when serving as intermediate providers, provided they maintain their safe harbor certification with the Commission. Though the *Order* maintains the three preexisting safe harbor requirements without change, and retains the existing recording and retention safe harbor until those requirements expire, it adds Section 64.2109 to add the application of the safe harbor to the *Order's* newly adopted service quality standards for intermediate providers.[99] Because no small entities have previously filed for safe harbor in this proceeding, the Commission is confident the economic impact of this change upon small entities is minimal.

[96] *See Third RCC FNPRM*, 33 FCC Rcd at 4233, para. 87. A covered provider is the "provider of long distance service that makes the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines . . ." 47 CFR § 64.2101.

[97] *See* ATIS Comments at Verizon Comments at 8-9; Alaska Communications Comments at 2; ITTA Comments at 5-6; Sprint Comments at 5; USTelecom Comments at 7.

[98] *See* 47 U.S.C. § 262(h); 47 CFR § 64.2107; *see also supra* Appendix A (new section 64.2109)

[99] *See Order* Section III.D.

STATEMENT OF
CHAIRMAN AJIT PAI

Re: *Rural Call Completion*, WC Docket No. 13-39.

In 2019, every American should be able to rely on a telephone system that works. But for those living in rural or remote parts of the country, that's still not always the case. Calls to these areas can get dropped. Or they can result in dead air, false busy signals, or an erroneous message that "the number you have dialed is not in service."

These rural call completion problems can have costly repercussions for friends and relatives trying to connect with loved ones, for small businesses trying to retain customers, and for residents in distress trying to reach public safety officials. This is unacceptable. As one of the congressional sponsors of rural call completion legislation put it, "famil[ies] in rural America should not be disadvantaged because of where they live."[1] Businesses in rural states "should have the same communication access to conduct daily business[] as those in urban areas."[2] And improving rural call completion is critical "to ensuring the survival of small towns and granting Americans the choice to live and thrive in whatever community is best for them . . . rural, urban, or anywhere in between."[3]

I couldn't agree more. That's why we continue our efforts to tackle rural call completion problems by taking new steps to implement the Improving Rural Call Quality and Reliability Act of 2017. Specifically, we adopt service quality standards for intermediate providers. (These "middlemen" carriers take calls from the originating carrier and send them toward the terminating carrier, and can be the source of rural call completion problems.) *First*, we require intermediate providers to take steps reasonably calculated to ensure that any calls they handle are in fact completed. When intermediate providers know, or should know, of a call completion problem, they must now act to address it. *Second*, when intermediate providers route calls to rural areas, they must actively monitor the performance of any intermediate provider they use. And based on the results of that monitoring, they must take steps to address any identified performance issues with that provider. *Third*, we require intermediate providers to ensure that any additional intermediate providers they use are registered with the Commission.

In today's *Order*, we also sunset the FCC's call data recording and retention rules for originating carriers, known as "covered providers," one year after the new service quality standards become effective. Sunsetting these outdated rules will allow covered providers to focus on complying with the monitoring and other requirements we adopted last year rather than continuing to collect and retain data that has proven to be of little use in resolving rural call completion problems.

Together, these changes should help achieve Congress' goal of ensuring the integrity of the telephone system for "*all* customers in the United States."[4]

For their outstanding work on behalf of rural consumers, I'd like to thank the following Commission staff: Pamela Arluk, Allison Baker, Alex Espinosa, Justin Faulb, Heather Hendrickson, Kris Monteith, Zachary Ross, and D'wana Terry of the Wireline Competition Bureau; Rizwan Chowdhry, Margaret Dailey, Robert Krinsky, Kalun Lee, and Aamer Zain of the Enforcement Bureau; Malena Barzilai, Ashley Boizelle, Tom Johnson, Richard Mallen, and Linda Oliver of the Office of General Counsel; and Eric

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[1] 163 CONG. REC. H585 (daily ed. Jan. 23, 2017) (Statement of Rep. David Young), *available at* https://www.congress.gov/115/crec/2017/01/23/CREC-2017-01-23.pdf.

[2] *Id.*

[3] *Id.*

[4] 47 U.S.C. § 262(c)(2) (emphasis added).

Burger, Joseph Calascione, Giulia McHenry, Chuck Needy, and Eric Ralph of the Office of Economics and Analytics.

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *Rural Call Completion*, WC Docket No. 13-39.

Today, we complete our implementation of last year's Rural Call Completion Act by adopting service quality standards for intermediate providers. In addition to fulfilling our statutory duty, our adoption of flexible standards rather than bright-line rules in this instance is a sound direction. This approach strikes an appropriate balance between our policy goal and ensuring that providers are not unduly burdened and possess discretion to manage their networks. Further, our flexible standards are consistent with the Commission's past approach with respect to covered originating providers.

I am additionally supportive of our decision to sunset data recording and retention requirements for covered providers. To the extent that those rules have created unnecessary burdens without producing concomitant rural call completion benefits, our decision to eliminate them is not only justified but imperative.

STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *Rural Call Completion*, WC Docket No. 13-39.

This decision is about a very straightforward principle. When you make a phone call—whether to catch up with a friend or to call for help in an emergency—the call should go through. But for too many Americans living in rural and remote areas, this isn't always the case. Their calls just don't go through, they hear a false busy signal, or they don't hear anything on the other end of the line. Often, the problem can be traced back to what are known in the telecom industry as "intermediate providers."

Last year, Congress stepped in by giving the FCC additional authority and directing the agency to adopt service quality standards that apply to intermediate providers. We do that with today's Order. Intermediate providers will now have an obligation to take action and ensure that calls are completed. This will help ensure that everyone in the country has access to quality telecom services. I want to thank the staff of the Wireline Competition Bureau for its work on this item. It has my support.

STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
APPROVING IN PART, CONCURRING IN PART

Re: *Rural Call Completion*, WC Docket No. 13-39.

Communications requires trust. When you pick up the phone to place a call, you should have every confidence that your call will go through. But in too many places in rural America, that is not happening. Calls to family and friends will ring and ring without ever being answered. Business connections will never get made. And worse, calls to public safety may not go through.

For too long, consumers in rural communities—and the carriers that serve them—have complained about this problem. Over the last few years, the FCC has answered their call, putting in place new policies to improve call completion. But still this problem persists. So Congress sought to help when it passed the Rural Call Quality and Reliability Act. Under this law, last year the FCC adopted an intermediate carrier registry to improve call path transparency. Pursuant to the same legislation, here we establish service quality standards. They include a general duty to complete calls and monitor carriers responsible for call transfer and completion. I support the broad outlines of this effort. But let's be honest, the service quality standards we adopt today are weak tea. They lack the kind of objective criteria that make it easy to identify when problems arise. Because I would have preferred to put clearer rules of the road in place, I will concur in part. I also believe going forward we need to be especially vigilant because the only acceptable outcome is putting an end to this problem—and restoring trust.

STATEMENT OF
COMMISSIONER GEOFFREY STARKS

Re: *Rural Call Completion*, WC Docket No. 13-39.

We all depend on the phone network working. We may not know exactly how our call gets from one point to the other, but we assume that when we make a call, it will reach the party we are calling. But for the last decade or so, that assumption did not ring true for some calls to rural areas. And it's not because of technological difficulties. It's because a company in the call path tried to save money by demoting, and in some cases disposing of, calls to rural areas rather than paying the cost to complete them. This is unacceptable. Calls to rural areas are just as important as every other call. These calls could be from a child's school or to check in with family members. They could be calls to hospitals, or fire or police departments — if we can't rely on them going through it raises serious public safety issues.

The Commission has wrestled with rural call completion issues for years. To help understand the problem, let me briefly talk about how a call travels from your phone to whoever you are calling. Some calls start and end on the same carrier's network. But, often the person making a call has a different phone company than the person receiving it. So, calls frequently travel over multiple networks on their path to reach their destination. And, sometimes carriers in a call path may have contracts to hand off some of their traffic to "intermediate" providers. Sometimes these intermediate providers hand traffic off to other intermediate providers who may have cheaper rates to reach different parts of the country. The tricky part is that the final carrier in the call path is entitled to a small payment, typically paid by the carrier that hands it traffic, to complete a call. And, this payment, though still small, can be larger for calls headed to rural areas.

There have been the allegations for years that some intermediate carriers try to avoid paying this charge by gaming the system or simply dumping the traffic altogether. In this case calls never complete. In the worst cases a fake ring signal gets sent back to the caller, so they think the call went through, but it really didn't. The Commission has repeatedly reminded carriers that they have a duty to complete calls,[1] and that they are responsible for the actions of their agents, including their intermediate carriers.[2] But the rural call completion problems continued. Then, the FCC began to actively enforce this issue, entering into six consent decrees with carriers large and small since 2013, including a $40 million settlement with a major carrier just last year.[3] But the rural call completion problems continued.

[1] *See Developing a Unified Intercarrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers*, CC Docket No. 01-92, WC Docket No. 07-135, Declaratory Ruling, 27 FCC Rcd 1351, 1356, para. 12 (Wireline Comp. Bur. 2012) (*2012 Declaratory Ruling*); *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform-Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-32, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011); *Establishing Just and Reasonable Rates for Local Exchange Carriers; Call Blocking by Carriers*, WC Docket No. 07-135, Declaratory Ruling and Order, 22 FCC Rcd 11629 (Wireline Comp. Bur. 2007).

[2] *See 2012 Declaratory Ruling*, 27 FCC Rcd 1351, 1352, para. 4.

[3] *See T-Mobile USA, Inc.,* Order and Consent Decree, 33 FCC Rcd 3737 (EB 2018); *inContact, Inc.*, Order and Consent Decree, 31 FCC Rcd 4329 (2016); *Verizon*, Adopting Order and Consent Decree, 30 FCC Rcd 245 (EB 2015); *Matrix Telecom, Inc.*, Order and Consent Decree, 29 FCC Rcd 5709 (EB 2014); *Windstream Corp.*, Order and Consent Decree, 29 FCC Rcd 1646 (EB 2014); *Level 3 Commc'ns., LLC*, Order and Consent Decree, 28 FCC Rcd 2274 (EB 2013).

The problem grew bad enough that there were calls for Congress to pass legislation to address it. One of the most vexing parts of the problem was how to reach intermediate providers that only handle traffic in the middle of a call. I know from my time in the Enforcement Bureau that this is tricky stuff – identifying the carrier responsible for actually throwing a call overboard can be like chasing ghosts. Fortunately, in 2017, Congress gave the Commission new and powerful tools and authority to stop this problem. The FCC now has the power to make intermediate providers, a notoriously hard-to-pin-down group, identify themselves by registering with the Commission. Congress also required the FCC to develop service quality standards for intermediate providers. By these actions, Congress brought intermediate providers, including those who are not otherwise regulated as voice carriers, within the Commission's jurisdiction for the first time. As someone who has worked first-hand on these issues, I was happy to see Congress take these actions, because the Commission has specifically identified intermediate providers in a call path as contributing to rural call completion problems.[4] The plan was that registration requirements and Commission-designed service quality standards would fix the problem!

So, I was disappointed to see that the product of the Commission's year-long effort to create service quality standards for intermediate providers was weak tea. We essentially tell them: "complete these calls and keep an eye on each other." Remember, we have had such difficulty pinning down this group of intermediate providers that Congress had to step in. While I appreciate the hard work of the staff, today's Report and Order misses a real opportunity to ensure that intermediate providers don't continue to cause call completion problems by applying some well-grounded standards by which we can measure their behavior or by adopting some specific means by which to hold them accountable.

I fear that the Order doesn't do enough to fix rural call completion problems that stem from intermediate provider behavior. The registry for intermediate providers is not up and running yet, so we don't yet understand the full universe of intermediate providers. But we will find out. And nothing in the Commission's experience or this Order indicates that intermediate providers have the capability to monitor rural call completion performance of other intermediate providers. But we will find out. And the language in the Order limiting intermediate provider obligations to the use of "tools available" and to using "commercially reasonable efforts to alert" other intermediate providers is also concerning. To me these seem like loopholes that will be irresistible to this notoriously hard-to-pin down-group. But we will find out.

Bottom line—I won't be surprised if we are right back here at some point down the road discussing how to improve the intermediate provider service quality standards to stop rural call completion problems. In that light, I'm pleased that the Chairman and my fellow Commissioners accepted my suggestion to seek comment in a year on how the intermediate provider service quality standards are working, and on whether rural call completion problems have improved.

I know that the Wireline Competition Bureau and the Enforcement Bureau have been hard at work on this issue for years and I thank you for your efforts.

[4] *Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154, 16192, paras. 87-88 (2013).