

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

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

ORDER ON RECONSIDERATION

Adopted: November 4, 2014

Released: November 13, 2014

By the Commission: Chairman Wheeler and Commissioners Clyburn, Rosenworcel and Pai issuing separate statements; Commissioner O’Reilly concurring and issuing a statement.

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I. INTRODUCTION

1. On October 28, 2013, the Commission adopted the *Rural Call Completion Order*.<sup>1</sup> That Order established rules to combat extensive problems with successfully completing calls to rural areas, and created a framework to improve the ability to monitor call problems and take appropriate enforcement action. The *Rural Call Completion Order* reflected the Commission’s commitment to

<sup>1</sup> *Rural Call Completion*, WC Docket No. 13-39, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 16154 (2013) (*Rural Call Completion Order* or *Order*).

ensuring that high quality telephone service must be available to *all* Americans.<sup>2</sup> In this Order on Reconsideration, we affirm that commitment. We deny several petitions for reconsideration that, if granted, would impair the Commission's ability to monitor, and take enforcement action against, call completion problems. We do, however, grant one petition for reconsideration because we find that modifying our original determination will significantly lower providers' compliance costs and burdens without impairing the Commission's ability to obtain reliable and extensive information about rural call completion problems.

2. Specifically, we grant the petition filed by USTelecom and ITTA. In doing so, we modify rules adopted in the *Order* so that the recordkeeping, retention, and reporting requirements adopted in the *Order* do not apply to a limited subset of calls: intraLATA toll calls that are carried entirely over the covered provider's network,<sup>3</sup> and intraLATA toll calls that are handed off by the covered provider directly to the terminating local exchange carrier (LEC) or to the tandem that the terminating LEC's end office subtends.<sup>4</sup> The decision to grant reconsideration reflects a focused analysis of the costs of applying the rules to this limited set of traffic, the fact that this traffic represents a small portion of total toll traffic, and the modest incremental benefit that such data would likely yield.

3. We deny the petitions for reconsideration filed by Carolina West and COMPTTEL, deny and dismiss the petition for reconsideration filed by Sprint Corporation, as described below, and dismiss the petition for reconsideration filed by Transcom Enhanced Services, Inc.<sup>5</sup>

## II. BACKGROUND

4. In a February 2013 Notice of Proposed Rulemaking, the Commission sought comment on how to address rural call completion issues and sought comment on proposed rules.<sup>6</sup> In October 2013, the Commission adopted recordkeeping, retention, reporting, and ring signaling rules designed to help the

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<sup>2</sup> *Id.* at 16155, para. 1.

<sup>3</sup> A covered provider is 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 provider's affiliates. *See id.* at 16164-69, paras. 19-27.

<sup>4</sup> *See* The United States Telecom Association (USTelecom) and the Independent Telephone and Telecommunications Alliance (ITTA) Petition for Reconsideration or, in the Alternative, for Waiver or Extension of Time to Comply, WC Docket No. 13-39 (filed Jan. 16, 2014) (USTelecom/ITTA Petition); USTelecom/ITTA Reply Comments, WC Docket No. 13-39 (filed Mar. 11, 2014) (USTelecom/ITTA Reply). We dismiss as moot USTelecom/ITTA's alternative request for waiver or extension of time to comply with the *Rural Call Completion Order*. *See* USTelecom/ITTA Petition at 3. We dismiss as moot Section III.C.ii of CenturyLink's Petition for Waiver, in which CenturyLink seeks a waiver for intraLATA/interexchange toll traffic where CenturyLink's originating LEC hands the traffic directly to the terminating provider or where CenturyLink's LEC both originates and terminates the call. We also dismiss as moot the portion of AT&T's Petition for Waiver in which AT&T seeks the same relief. Because we have excluded such traffic from our recordkeeping, retention, and reporting requirements in this Order, these portions of CenturyLink's and AT&T's respective petitions are rendered moot. CenturyLink Petition for Waiver, WC Docket No. 13-39 at 10-11 (filed July 28, 2014) (CenturyLink Waiver Petition); AT&T Petition for Waiver, WC Docket No. 13-39 at 13-14 (filed April 10, 2014) (AT&T Waiver Petition).

<sup>5</sup> Carolina West Wireless, Inc. (Carolina West) Petition for Reconsideration, WC Docket No. 13-39 (filed Jan. 16, 2014) (Carolina West Petition); COMPTTEL Petition for Reconsideration, WC Docket No. 13-39 (filed Jan. 16, 2014) (COMPTTEL Petition); Sprint Corporation (Sprint) Petition for Reconsideration, WC Docket No. 13-39 (filed Jan. 16, 2014) (Sprint Petition); Transcom Enhanced Services, Inc. (Transcom) Motion for Reconsideration of Report and Order and New Rule 64.2201(b), WC Docket No. 13-39 (filed Jan. 14, 2014) (Transcom Petition).

<sup>6</sup> *Rural Call Completion*, WC Docket No. 13-39, Notice of Proposed Rulemaking, 28 FCC Rcd 1569 (2013) (*Notice*).

Commission and communications providers ensure that long-distance calls to rural Americans are completed.<sup>7</sup>

5. The recording, retention, and reporting rules we adopted in the *Rural Call Completion Order* apply to providers of long-distance voice service that make 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' affiliates.<sup>8</sup> These "covered providers" must record and retain specific information about each call attempt to a rural operating company number (OCN) from subscriber lines for which the providers make the initial long-distance call path choice.<sup>9</sup> This information must be stored in a readily retrievable form and must include the six most recent complete calendar months.<sup>10</sup> Covered providers must submit to the Commission, on a quarterly schedule, a certified report containing information on long-distance call attempts from subscriber lines for which the covered providers make the initial call path choice.<sup>11</sup> The reports must separate out call attempts by month.<sup>12</sup> The Commission adopted a safe harbor to reduce certain qualifying providers' reporting obligations and reduce their data retention obligations from six months to three months.<sup>13</sup> Further, the Commission adopted a process enabling covered providers that have taken additional steps, beyond the safe harbor requirements, to ensure that calls to rural areas are being completed to receive a waiver of the data reporting and retention obligations.<sup>14</sup> The Commission also adopted a rule prohibiting false audible ringing that applies to all originating long-distance voice service providers and intermediate providers.<sup>15</sup> This ring signaling rule prohibits providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted to the existence of an inbound call.<sup>16</sup>

6. The Commission received five petitions for reconsideration of portions of the *Rural Call Completion Order*.<sup>17</sup> Various parties filed comments in support of or in opposition to the petitions.<sup>18</sup>

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<sup>7</sup> See *Rural Call Completion Order*, 28 FCC Rcd 16154.

<sup>8</sup> *Id.* at 16164-69, paras. 19-27.

<sup>9</sup> An operating company number is a four place alphanumeric code that uniquely identifies providers of local telecommunications service. See Alliance for Telecommunications Industry Solutions (ATIS), *ATIS Telecom Glossary*, ATIS, <http://www.atis.org/glossary/definition.aspx?id=8448> (last accessed Jul. 23, 2014).

<sup>10</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16212, Appx. A, § 64.2103(a). Call attempts to toll-free numbers, as defined in 47 C.F.R. § 52.101(f), are excluded from these requirements. *Id.* at 16212, Appx. A, §64.2103(d).

<sup>11</sup> *Id.* at 16212-13, Appx. A, §§ 64.2105(a)-(b).

<sup>12</sup> *Id.* at 16212, Appx. A, §§ 64.2105(a)-(b).

<sup>13</sup> *Id.* at 16191-94, 16213-14, paras. 85-94, Appx. A, §§ 64.2107(a)-(d).

<sup>14</sup> *Id.* at 16194-95, paras. 95-97.

<sup>15</sup> *Id.* at 16200-04, 16214, paras. 111-19, Appx. A, § 64.2201.

<sup>16</sup> *Id.* at 16202-03, para. 115.

<sup>17</sup> See *supra* notes 4-5.

<sup>18</sup> HyperCube Telecom, LLC (HyperCube) Comments in Support of Certain Petitions for Reconsideration, WC Docket No. 13-39 (filed Mar. 4, 2014) (HyperCube Comments) (supporting the COMPTTEL Petition and Sprint Petition); National Exchange Carrier Association, Inc. (NECA), NTCA – The Rural Broadband Association (NTCA), Eastern Rural Telecom Association (ERTA), and WTA – Advocates for Rural Broadband (WTA) (collectively the Rural Associations) Opposition to Petitions for Reconsideration, WC Docket No. 13-39 (filed Mar. 4, 2014) (Rural Associations Opposition) (opposing the Sprint Petition and Transcom Petition and urging careful consideration of the impact of the USTelecom/ITTA Petition); Nebraska Public Service Commission Comments, WC Docket No. 13-39 (filed Mar. 4, 2014) (Nebraska Comments) (opposing the Sprint Petition and USTelecom/ITTA Petition); Public Utility Commission of Oregon Opposition to Petition for Reconsideration, WC

(continued . . .)

### III. DISCUSSION

#### A. USTelecom/ITTA Petition: IntraLATA Toll Calls

7. The requirements described above apply to “intraLATA toll traffic and interLATA traffic carried on [the covered provider’s] own network and handed off directly by the originating provider to the terminating LEC.”<sup>19</sup> The Commission initially declined to exclude this traffic, “[e]ven if [such traffic] would incur fewer call completion issues,” because data on this traffic would “provide[] an important benchmark for issue-free performance,” especially “where a provider may be using both on-net and off-net routes to deliver calls to the same terminating provider.”<sup>20</sup>

8. In their petition for reconsideration, USTelecom and ITTA (USTelecom/ITTA or Petitioners) request that the Commission reconsider the decision to require recordkeeping, retention, and reporting of “on-network” intraLATA interexchange/toll calls.<sup>21</sup> Specifically, Petitioners seek reconsideration of application of the recordkeeping, retention, and reporting rules adopted in the *Order* for “intraLATA interexchange/toll calls that are either carried entirely over the originating LEC’s network (that is, originated and terminated by the same carrier) or handed off by the originating LEC directly to the terminating LEC.”<sup>22</sup>

9. We remain committed to both the goals of the *Rural Call Completion Order*, and the rules the Commission adopted therein to identify and address rural call completion and call quality problems. Excluding on-net intraLATA toll traffic from the recordkeeping, retention, and reporting requirements will reduce the burden of compliance without undermining these goals. Based on new information that was not available to the Commission when the *Rural Call Completion Order* was adopted, we conclude that the burdens associated with applying our rules to on-net intraLATA toll calls exceed the marginal benefit of obtaining this limited incremental information. Accordingly, we grant USTelecom/ITTA’s petition for reconsideration.

10. Excluding on-net intraLATA toll traffic from the scope of these rules will not undermine the goals of the *Rural Call Completion Order* and will not impair the Commission’s ability to monitor

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Docket No. 13-39 (filed Mar. 4, 2014) (Oregon Opposition) (opposing Sprint Petition and USTelecom/ITTA Petition); Sprint Comments, WC Docket No. 13-39 (filed Mar. 4, 2014) (supporting other petitions); XO Communications, LLC (XO) Comments in Support of Petitions for Reconsideration, WC Docket No. 13-39 (filed Mar. 4, 2014) (XO Comments) (supporting the COMPTTEL and Sprint Petitions); Sprint Reply Comments, WC Docket No. 13-39 (filed Mar. 11, 2014) (Sprint Reply); Transcom Reply to Opposition to Request for Reconsideration, WC Docket No. 13-39 (filed Mar. 11, 2014) (Transcom Reply); USTelecom/ITTA Reply; U.S. TelePacific Corp. and Mpower Communications Corp. Reply Comments, WC Docket No. 13-39 (filed Mar. 11, 2014) (TelePacific/Mpower Reply); Verizon and Verizon Wireless (Verizon) Reply Comments, WC Docket No. 13-39 (filed Mar. 11, 2014) (Verizon Reply).

<sup>19</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16178, para. 51.

<sup>20</sup> *Id.* When it originally adopted this requirement, the Commission rejected RCN Telecom Services, LLC’s assertion that “on-network” calls should have been excluded. *Id.*; see also Letter from James C. Falvey and Justin L. Faulb, Counsel for RCN Telecom Services, LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 at 9 (filed Sept. 25, 2013). For purposes of this Order, “on-net” or “on-network” means that a call is delivered entirely over a covered provider’s own network until it is handed off to the terminating LEC or tandem that the terminating LEC’s end office subtends. “Off-net” means that a call is handed off to another provider between the covered provider and the terminating provider or terminating tandem.

<sup>21</sup> USTelecom/ITTA Petition at 3. AT&T and CenturyLink also request waiver of our rules for on-net intraLATA toll traffic. See *supra* note 4.

<sup>22</sup> *Id.* at 1-2. Verizon supports the USTelecom/ITTA Petition. See Letter from Maggie McCready, Vice President, Federal Regulatory Affairs, Verizon, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 at 2 (filed Mar. 24, 2014); Verizon Reply (filed Mar. 11, 2014).

and address problems associated with completing calls to rural areas. First, the Commission will continue to have access to information about on-net interLATA toll traffic, as well as all off-net traffic, and this traffic comprises the significant majority of all calls. Petitioners assert that the volume of on-network intraLATA toll traffic is relatively small — less than three percent of the total traffic on the network of one of USTelecom’s largest members.<sup>23</sup> CenturyLink estimates that less than one percent of its traffic is on-net intraLATA toll traffic.<sup>24</sup> Although the data samples available to establish on-net delivery benchmarks will be slightly reduced by removing the intraLATA toll component, we are persuaded both by new evidence from Petitioners and supporting commenters and by the nature of these on-net intraLATA toll calls that on-net delivery benchmarks will not significantly change. Covered providers remain obligated to follow our recordkeeping, retention, and reporting rules for all interLATA and off-net intraLATA toll traffic.<sup>25</sup> Second, the Commission will still be able to use on-net interLATA traffic as a benchmark for assessing off-net traffic performance, which was the stated reason for requiring providers to record, retain and report on-net traffic data.<sup>26</sup> Because the vast majority of on-net long distance traffic is interLATA traffic,<sup>27</sup> the Commission will continue to have an effective benchmark by which to compare off-net long distance call failure rates for a particular carrier.<sup>28</sup>

11. The cost of including on-net intraLATA toll traffic in the recording and reporting requirements exceeds the limited incremental benefit from collecting this data. After analyzing the requirements of the *Rural Call Completion Order*, USTelecom/ITTA and Verizon provided new information regarding the compliance costs of applying the recordkeeping, retention, and reporting obligations to on-net intraLATA toll traffic and the compliance cost reductions associated with excluding on-net intraLATA toll traffic from these requirements.<sup>29</sup> Petitioners explain that their members currently lack the ability to capture call attempt information for this traffic because their members generally only

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<sup>23</sup> USTelecom/ITTA Petition at 4. The Rural Associations note that a major billing vendor found nearly twenty percent of all toll traffic terminated by RLECs (*i.e.*, delivered both on-net and off-net) was intraLATA, and only four percent of that (and .765 percent of all traffic) was terminated via an Regional Bell Operating Company. See Letter from Colin Sandy, Government Relations Counsel, NECA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 at 2 (filed Mar. 12, 2014) (NECA March 12, 2014 *Ex Parte*). These figures are not necessarily inconsistent with USTelecom/ITTA’s assertions when considering only the intraLATA toll traffic delivered on-net.

<sup>24</sup> See CenturyLink Waiver Petition at 10.

<sup>25</sup> The rules do not require providers to report separately on-net and off-net traffic in their quarterly reports. Rather, the reports are designed to illuminate a covered provider’s overall performance in completing calls to individual rural LECs by whatever means the provider chooses, whether on-net or off-net.

<sup>26</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16178-79, para. 51. The Commission noted that one key reason for the increased problems in rural areas is that a call to a rural area is often handled by numerous different providers in the call’s path. *Id.* at 16163, para. 17.

<sup>27</sup> See USTelecom/ITTA Petition at 3; CenturyLink Waiver Petition at 10.

<sup>28</sup> Providers must retain interLATA call data that, when requested by the Commission, will allow it to identify call completion issues related to on-net interLATA traffic by using the call failure rate for such traffic as a benchmark for comparison to both intraLATA and interLATA off-net long-distance call failure rates of that provider. The on-net interLATA call data that providers still must record and retain can be used to analyze on-net performance to a given rural LEC should the need to do so arise.

<sup>29</sup> The new evidence regarding both: (1) the compliance cost reductions associated with excluding on-net intraLATA toll traffic from our rules; and (2) the fact that on-net intraLATA toll traffic is only a small fraction of on-network traffic, are relevant to our decision to reconsider and we find that consideration of this data is in the public interest. The USTelecom/ITTA Petition does not contravene § 1.429(b) of the Commission’s rules because we find consideration of these facts is required in the public interest. See 47 C.F.R. § 1.429(b)(3).

collect data for billable calls and consequently had no reason to record this information.<sup>30</sup> While this category of traffic reportedly represents a relatively small percentage of Petitioner's traffic, Petitioners estimate that, industry-wide, implementing such capability into legacy networks to comply with recordkeeping, retention, and reporting requirements for this traffic would take "at least 18 to 24 months and cost in excess of \$100 million."<sup>31</sup> In comments supporting the USTelecom/ITTA Petition, Verizon states that it would cost in excess of \$20 million and take two years to collect and report data for intraLATA interexchange/toll traffic.<sup>32</sup> As explained above, the Commission can establish an on-net benchmark against which to compare off-net performance without on-net intraLATA toll traffic data.<sup>33</sup> Therefore, we find that at this time the compliance costs for reporting information on this small category of calls are not justified. We are committed to balancing the costs and benefits of regulatory obligations in the public interest.

12. The Commission considered and denied a broader request to exclude both intraLATA and interLATA on-net information in the *Rural Call Completion Order*; USTelecom/ITTA's reconsideration request is much narrower and does not seek exclusion of on-net interLATA call data.<sup>34</sup> Moreover, when it made that decision, the Commission did not have the benefit of data regarding the costs and benefits specifically associated with retaining and reporting on on-net intraLATA toll traffic. As a result, the new evidence regarding both: (1) the compliance cost reductions associated with excluding on-net intraLATA toll traffic from our rules; and (2) the fact that on-net intraLATA toll traffic is only a small fraction of on-network traffic, are relevant to our decision to reconsider and we find that consideration of this data is in the public interest.<sup>35</sup>

13. Petitioners also assert that on-net intraLATA toll traffic is unlikely to be a source of call completion problems.<sup>36</sup> Petitioners report that the on-network intraLATA toll traffic for which they seek relief in their petition does not involve the use of intermediate providers and that, rather than having multiple carriers in the call completion path, these calls are typically carried by a single provider on its own network or are handed off directly to the terminating LEC.<sup>37</sup> We need not and do not decide whether on-net traffic might ever present concerns about call quality or completion. Our decision to exclude on-network intraLATA toll traffic from our recordkeeping, retention, and reporting requirements reflects an

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<sup>30</sup> See USTelecom/ITTA Petition at 1-2, 4; Verizon Reply at 1-4. USTelecom/ITTA explain that "because uncompleted calls are not billed, carriers generally do not collect or retain all the necessary data for intraLATA interexchange/toll calls that are not answered by the called party – including call treatment (release codes) records." *Id.* at 2, 4. They assert that, because there has never been a business reason for LECs to design their networks to capture such information, their members do not currently collect this information, and most lack the capability to collect and report call attempt data for this traffic. *Id.* at 2, 4. They further contend that implementing such capability into legacy networks at this time would be time-consuming and prohibitively expensive, and describe the associated costs and work that would be required. *Id.* at 6-7. USTelecom/ITTA assert that the cost to a single large LEC would exceed \$20 million. *Id.* at 7.

<sup>31</sup> USTelecom/ITTA Petition at 6. AT&T and CenturyLink support USTelecom/ITTA's burden estimates. See AT&T Waiver Petition at 13-14; CenturyLink Waiver Petition at 11.

<sup>32</sup> Verizon Reply at 1, 3-4 (agreeing with USTelecom/ITTA's arguments, noting that Verizon does not collect or retain data regarding intraLATA interexchange/toll calls that are not billable, and stating that Verizon would need to deploy over 70 SS7 probes at an estimated cost of \$23 million and that doing so would take 24 months).

<sup>33</sup> See *supra* para. 10.

<sup>34</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16178, para. 51.

<sup>35</sup> We note that the USTelecom/ITTA Petition does not contravene § 1.429(b) of the Commission's rules because we find consideration of these facts is required in the public interest. See 47 C.F.R. § 1.429(b)(3).

<sup>36</sup> See, e.g., USTelecom/ITTA Petition at 5; see also RCN Sept. 25, 2013 *Ex Parte* Letter at 2.

<sup>37</sup> *Id.* at 2, 5. For purposes of these rules, the term "intermediate provider" has the same meaning as in section 64.1600(f) of our rules.

overall balancing of the costs and benefits, including consideration of the small portion of traffic that is on-net intraLATA toll traffic. Moreover, our rules remain in effect for the remainder of covered provider traffic, which includes on-net interLATA toll traffic, as well as off-net intraLATA toll traffic and off-net interLATA traffic.

14. We implement the exclusion discussed above by amending the recordkeeping, retention, and reporting rules adopted in the *Order* to exclude their applicability to intraLATA toll calls carried entirely over the covered provider's network or handed off by the covered provider directly to the terminating LEC or directly to the tandem switch serving the terminating LEC's end office. We also amend the definition of "long-distance voice service" in section 64.2101 of our rules to include intraLATA toll voice services. We make this amendment to harmonize the rule language with the Commission's intent expressed in the *Order*, where it defined "long-distance voice service provider" for purposes of the *Order* as any person engaged in the provision of specific voice services, including intraLATA toll voice services.<sup>38</sup>

15. Some entities argue that the Commission should not make these changes to its new call completion rules until it collects and analyzes a year's worth of call data or opens an inquiry into the matter.<sup>39</sup> As explained above, the industry-wide costs of compliance are substantial, and exceed the potential value of the incremental data we would collect. A large portion of the costs associated with complying with the recordkeeping, retention and reporting would occur at the outset, because providers would have to develop and implement systems to collect this information. Having concluded that the potential value of the data is outweighed by the significant burden of compliance, we cannot conclude that such costs are justified on a one-time or short-term basis. While we decline to impose the burden of collecting and reporting data on such traffic on a temporary basis, we can revisit this decision if evidence later suggests that on-net intraLATA calls to rural areas are not being completed properly. For example, we will continue to monitor information and complaints submitted about call completion problems and will be attentive to the jurisdictional nature about such complaints.

16. All parties generally agree that any relief granted should be limited to calls carried on-network or handed off directly from the originating carrier to the terminating carrier.<sup>40</sup> USTelecom/ITTA and Verizon assert that the relief should encompass calls delivered directly to the terminating tandem, as well as to the terminating carrier.<sup>41</sup> USTelecom/ITTA and Verizon state that many rural LECs can only be reached through these tandems, and that covered providers have no involvement in the selection or performance of these tandems.<sup>42</sup> USTelecom/ITTA note that these tandems exist largely due to the legacy

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<sup>38</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16164-65, 16176, paras. 20 n.61, 45 n.128.

<sup>39</sup> See Rural Associations Opposition at 2, 11 (arguing that the Commission should not make changes to the rules until it collects and analyzes a year's worth of call data); Oregon Opposition at 4 (asking the Commission to first open an inquiry, arguing that the current record lacks a full discussion of the issue raised in the USTelecom/ITTA Petition); Nebraska Comments (concurring with and supporting the Oregon Opposition).

<sup>40</sup> The Rural Associations state that a significant amount of intraLATA traffic is handled by intermediate providers and assert that, if the Commission considers the USTelecom/ITTA Petition, "it should narrowly tailor any revisions or waivers to include only 'on-network' intraLATA traffic that is originated by the LEC's retail customers and carried entirely over that originating carrier's network or is passed directly from the originating carrier to a terminating carrier." Rural Associations Opposition at 10-11. The Rural Associations further assert that "all traffic involving any third party intermediate providers, or originated by other providers, should be included in the data retention and reporting requirements imposed by the rules." *Id.* at 11. The Rural Associations asserted the same position in a March 10 *ex parte* meeting. See NECA March 12, 2014 *Ex Parte* at 1-2.

<sup>41</sup> USTelecom/ITTA Petition at 1-2; USTelecom/ITTA Reply at 2; Verizon Reply at 1-2; Rural Associations Opposition at 11.

<sup>42</sup> USTelecom/ITTA Reply at 2; Verizon Reply at 2.

structure of the networks and are the equivalent of a direct network connection.<sup>43</sup> They note that the Commission declined to count the tandem as an additional intermediate provider for purposes of safe harbor eligibility.<sup>44</sup> The Rural Associations did not specifically address whether any relief granted on reconsideration should include calls delivered directly to the terminating tandem. We find Petitioner's arguments compelling and grant the request for relief from the recordkeeping, retention, and reporting requirements for intraLATA toll calls that are delivered by the covered provider directly to the tandem that the terminating LEC's end office subtends.

17. The Rural Associations also assert that any relief should be limited to "only the intraLATA traffic that is originated by the LEC's retail customers."<sup>45</sup> The Rural Associations did not, however, provide any reasons for limiting relief to retail traffic. Verizon opposes such limitation, arguing that it "has wholesale arrangements through which it provides intraLATA interexchange/toll service in the same manner as it carries traffic for its [retail] customers" and that the same implementation obstacles exist for this traffic.<sup>46</sup> In the absence of specific or substantiated arguments to support limiting relief to calls originated by retail customers, we decline to do so.

#### **B. COMPTTEL Petition: Smaller Covered Provider Exception**

18. COMPTTEL seeks reconsideration of the smaller covered provider exception. As noted above, in the *Order*, the Commission concluded that it should require only providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines to comply with the recording, retention, and reporting rules.<sup>47</sup> COMPTTEL argues, on various grounds, that the Commission should reconsider this conclusion, so that more providers qualify for the smaller provider exception.<sup>48</sup> For the reasons set forth below, we deny COMPTTEL's Petition.

#### **1. Administrative Procedure Act**

19. COMPTTEL asserts that the Commission violated the Administrative Procedure Act (APA) because the Commission (1) did not provide an explanation for the change in the smaller covered provider exception from the proposal in the NPRM that referred to "subscribers" to the rule ultimately adopted that instead refers to "subscriber lines," and (2) did not give adequate notice and opportunity to comment on the definition of smaller provider adopted in the *Rural Call Completion Order*.<sup>49</sup> We find these arguments to be without merit.<sup>50</sup>

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<sup>43</sup> USTelecom/ITTA Reply at 2.

<sup>44</sup> *Id.* at 2-3.

<sup>45</sup> Rural Associations Opposition at 11.

<sup>46</sup> Verizon Reply at 3.

<sup>47</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16168-69, para. 27. For purposes of this Order on Reconsideration, we refer to this threshold as the "smaller covered provider exception" or "exception."

<sup>48</sup> In its Petition for Reconsideration, Carolina West argues that the Commission should modify the definition of "covered provider" so that lines served by non-controlling minority owners are not counted toward the 100,000 subscriber line threshold. See Carolina West Petition at 2. Carolina West contends further that without this modification, the small provider exception to our recordkeeping and reporting rules is unnecessarily narrow. See *id.* at 4. We address Carolina West's concerns below in Section III.E.

<sup>49</sup> See COMPTTEL Petition at 1-6; see also HyperCube Comments at 2-3 (supporting COMPTTEL's petition for reconsideration); TelePacific/Mpower Reply at 1 (supporting COMPTTEL's petition for reconsideration); XO Comments at 1-5 (supporting COMPTTEL's petition for reconsideration).

<sup>50</sup> In the *Notice*, the Commission proposed to require only those originating long-distance providers and other covered providers with more than 100,000 retail long-distance *subscribers* (business or residential) to retain data and periodically report a summary analysis of that information to the Commission. *Notice*, 28 FCC Rcd at 1579, para. 31. The Commission also asked whether excluding smaller providers from the requirements would "compromise

(continued . . .)



20. *Reasoned Explanation.* The rule that the Commission adopted to except smaller providers from recordkeeping and reporting requirements was reasonable, and the Commission's decision to base the exception on the number of a provider's subscriber lines for which the provider makes the initial long-distance call path choice, rather than the number of its subscribers, was also reasonable. The purpose of the exception, as COMPTTEL recognized in its petition for reconsideration, was to exempt smaller providers from the record-keeping and reporting requirements.<sup>51</sup> In the notice, the Commission asked commenters about ways to minimize burdens on smaller providers, "without compromising the goals of [the] rules."<sup>52</sup> The rule that the Commission selected was a reasonable means of achieving this balance.<sup>53</sup> Although COMPTTEL objects to the decision to adopt an exception based on the number of subscriber lines, it does not assert that the adoption of such an exception will compromise the Commission's goals when implementing these rules.

21. Excepting providers on the basis of subscriber lines, rather than subscribers, is reasonably designed to minimize burdens on smaller providers without compromising the effectiveness of the rules. The number of lines better reflects a provider's size and share of traffic than does the number of subscribers. For example, a provider that serves a modest number of very large business customers (each with hundreds of subscriber lines) may handle a substantial portion of traffic to rural areas. Thus, excepting providers on the basis of subscribership would not have been as well suited, relative to an exclusion based on subscriber lines, to ensure that only smaller covered providers are subject to the exception. In addition, the Commission noted that the 100,000 subscriber-line threshold should capture as much as 95 percent of all callers.<sup>54</sup> Thus, the exception will not compromise the effectiveness of the rules.

22. Additionally, the use of "subscriber lines" is easier to administer than a subscriber-based exception would be. The Commission collects data, via FCC Form 477, on subscriber lines. The Commission does not routinely collect data that provides an equally reliable count of "subscribers." By defining the smaller covered provider exception in terms consistent with the Commission's Form 477 collection of voice telephony data, the Commission will be able to verify that entities claiming the exception are in fact eligible for it.<sup>55</sup>

23. COMPTTEL argues that far more smaller providers will be required to comply with the adopted recordkeeping, retention, and reporting requirements, and that compliance will be expensive and burdensome for providers to implement, especially smaller providers.<sup>56</sup> We recognize that, as a result of the change from subscribers to subscriber lines, some additional providers will need to expend the resources necessary to comply with these rules. However, we find that the importance of obtaining the data necessary to address rural call completion problems and the benefits described above of the adopted

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the Commission's ability to monitor rural call completion problems effectively." *Id.* In the *Order*, the Commission adopted an exception for providers that make the initial long-distance call path choice for 100,000 or fewer subscriber lines. *Rural Call Completion Order*, 28 FCC Rcd at 16168-69, para. 27.

<sup>51</sup> COMPTTEL Petition at 7-8.

<sup>52</sup> *Notice*, 28 FCC Rcd at 1580, para 32.

<sup>53</sup> See *Rural Call Completion Order*, 28 FCC Rcd at 16168-69, para. 27 & nn. 85-86 (discussing the range of comments); see also *infra* para. 30 (similar).

<sup>54</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16169, para. 27.

<sup>55</sup> Providers might have their own unique methodology for identifying and counting their subscribers and a subscriber-based threshold could be subject to gaming, given the Commission's lack of a comparison set of data.

<sup>56</sup> COMPTTEL Petition at 2-3; see also HyperCube Comments at 2-3, XO Comments at 1-2, TelePacific/Mpower Reply at 1-2.

exception outweigh the burden these providers will encounter.<sup>57</sup> We note that only providers that actually *make the initial call path choice* for more than 100,000 subscriber lines are required to comply with the rules.<sup>58</sup> Additionally, in the *Order*, the Commission reduced the compliance burden, relative to the proposed rules, in a number of ways.<sup>59</sup> We further reduce compliance burdens today by excluding intraLATA on-net toll traffic from the recordkeeping, retention, and reporting requirements.<sup>60</sup> Finally, although COMPTTEL argues that far more providers will be required to comply with the recordkeeping, retention, and reporting requirements as a result of the change from “subscribers” to “subscriber lines” we believe that the number of affected providers will be more modest. COMPTTEL’s assertion is premised on an erroneous interpretation of Paperwork Reduction Act of 1995 (PRA) filings.<sup>61</sup> While suggesting that there could be more, COMPTTEL has identified only four entities affected by this change.<sup>62</sup>

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<sup>57</sup> We note that in their petitions and comments, COMPTTEL, HyperCube, and XO did not provide any specific data regarding the increased costs of complying with the recordkeeping, retention, and reporting requirements adopted in the *Order*. See COMPTTEL Petition; HyperCube Comments; XO Comments. Only TelePacific/Mpower estimated that developing a process for obtaining all necessary terminating call records required by our reporting rules will take months and cost more than \$50,000. TelePacific/Mpower Reply at 4. We also note that providers may file waiver requests. The Commission may waive its rules, in whole or in part, for good cause and may exercise its discretion to waive a regulation where the particular facts make strict compliance inconsistent with the public interest. See 47 C.F.R. § 1.3; *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>58</sup> See *Rural Call Completion Order*, 28 FCC Rcd at 16211, Appx. A, § 64.2101(c) (defining a “covered provider” as 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) (emphasis added).

<sup>59</sup> For example, the Commission reduced the burden for all providers, including covered smaller providers, when it changed the rule requiring retention of call detail records to apply only to call attempts to rural ILECS, a relatively small percentage of total call attempts, and determined that call attempts to nonrural incumbent LECs need not be retained. See *Rural Call Completion Order*, 28 FCC Rcd at 16177-78, para. 49; *id.* at 16227-28, Appx. D, para. 31; see also *id.* at 16182-84, paras. 61-64 (adopting a 6-month retention period so as to better balance the benefits “of better ensuring satisfactory levels of call completion to rural areas and any associated burdens on covered providers”); *id.* at 16178, para. 50 & nn.140, 145 (excluding calls terminating to CLECs, CMRS providers, and VoIP service providers from the recordkeeping, retention, and reporting requirements).

<sup>60</sup> See *supra* Section III.A.

<sup>61</sup> COMPTTEL asserts that the number of entities subject to the rules increased from 90 to 225 as a result of changing “subscribers” to “subscriber lines.” This assertion is erroneous. In its PRA submission following release of the *Notice*, the Commission estimated that 90 providers would be subject to the proposed information collections. See Federal Communications Commission, *Rural Call Completion Recordkeeping and Reporting*, WC Docket No. 13-39, 78 Fed. Reg. 21891, 21892 (Apr. 22, 2013). In the PRA *Notice* following release of the *Order*, the Commission estimated that 225 providers would be subject to the final information collections. See Federal Communications Commission, *Rural Call Completion*, WC Docket No. 13-39, 78 Fed. Reg. 79448, 79449 (Dec. 30, 2013); see also Federal Communications Commission, *Rural Call Completion Recordkeeping and Reporting*, WC Docket No. 13-39, 78 Fed. Reg. 21891, 21892 (Apr. 22, 2013). COMPTTEL assumes that this increase is due to the change from “subscribers” to “subscriber lines” in the smaller covered provider exception. In fact, however, the increased estimate reflects *all* of the changes between the proposed rules and the final rules, including the *Order*’s request for voluntary quarterly reporting of call answer rates by rural ILECs. See *Rural Call Completion Order*, 28 FCC Rcd at 16198-99, paras. 107-108 (encouraging rural incumbent LECs to report quarterly on the number of incoming long-distance call attempts received, the number answered on their networks, and the call answer rate calculation for each of the previous three months, by the reporting dates for covered providers). Among other changes, the *Order* also extended the scope of the rules to include one-way VoIP providers. See, e.g., *Rural Call Completion Order*, 28 FCC Rcd at 16167, para. 23 (stating that the Commission sees “no basis for excluding one-way VoIP providers from the scope of our rules”).

<sup>62</sup> See Letter from Angie Kronenberg, Chief Advocate and General Counsel, COMPTTEL, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 at 1 (filed Nov. 20, 2013) (COMPTTEL November 20, 2013 *Ex Parte*); Letter from Angie Kronenberg, Chief Advocate and General Counsel, COMPTTEL, to (continued . . .)

24. *Notice.* COMPTTEL alleges that the Commission's decision to exclude from the requirements providers that make the initial long-distance call path choice for 100,000 or fewer subscriber lines, rather than adopting the specific proposal set forth in the *Notice*, failed to provide adequate notice and opportunity to comment.<sup>63</sup> COMPTTEL asserts that no commenter advocated adoption of a rule that defined smaller provider based on "subscriber lines," and that far fewer providers are eligible for the exception as a result of the change.<sup>64</sup>

25. We disagree that the Commission failed to provide adequate notice and an opportunity to comment. We find that the smaller covered provider exception adopted in the *Order* is a logical outgrowth of the smaller provider exception proposed in the *Notice* and is well within the scope of the inquiry initiated by the *Notice*.<sup>65</sup> As discussed below, the Commission determined that a smaller covered provider exception, albeit a revised version of the originally proposed exception, is warranted.

26. Section 553(b) and (c) of the APA requires agencies to give public notice of a proposed rulemaking that includes "either the terms or substance of the proposed rule or a description of the subjects and issues involved" and to give interested parties an opportunity to submit comments on the proposal.<sup>66</sup> The notice "need not specify every precise proposal which [the agency] may ultimately adopt as a rule"; it need only "be sufficient to fairly apprise interested parties of the issues involved."<sup>67</sup> In particular, the APA's notice requirements are satisfied where the final rule is a "logical outgrowth" of the actions proposed.<sup>68</sup> As long as parties could have anticipated that the rule ultimately adopted was possible, it is considered a "logical outgrowth" of the original proposal, and there is no violation of the APA's notice requirements.<sup>69</sup>

27. The Commission provided the required notice by seeking comment on the proposed smaller covered provider exception.<sup>70</sup> The Commission provided notice that it might exclude smaller providers, and proposed a threshold of 100,000 subscribers, but it also sought comment on whether the proposed exception would compromise the Commission's ability to monitor rural call completion problems.<sup>71</sup> Among other things, the Commission explained that it was proposing rules to "help [it]

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Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 at 1 (filed Nov. 26, 2013) (COMPTTEL November 26, 2013 *Ex Parte*); Letter from Angie Kronenberg, Chief Advocate and General Counsel, COMPTTEL, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 at 1 (filed Dec. 23, 2013) (COMPTTEL December 23, 2013 *Ex Parte*).

<sup>63</sup> COMPTTEL Petition at 2-4.

<sup>64</sup> COMPTTEL Petition at 3, 7, 9.

<sup>65</sup> See *Public Service Commission of the District of Columbia v. FCC*, 906 F.2d 713, 717 (D.C. Cir. 1990) ("It is well established that the exact result reached after a notice and comment rulemaking need not be set out in the initial notice for the notice to be sufficient. Rather, the final rule must be 'a logical outgrowth' of the rule proposed.")

<sup>66</sup> 5 U.S.C. §§ 553(b)-(c).

<sup>67</sup> *Nuvio Corp. v. FCC*, 473 F.3d 302, 310 (D.C. Cir. 2006) (citing *Action for Children's Television v. FCC*, 564 F.2d 458, 470 (D.C. Cir. 1977) (internal quotation marks and citations omitted)).

<sup>68</sup> See *PSC of DC v. FCC*, 906 F.2d at 717.

<sup>69</sup> See *Northeast Maryland Waste Disposal Authority v. EPA*, 358 F.3d 936, 951 (D.C. Cir. 2004) (discussing APA notice requirements and the "logical outgrowth" test).

<sup>70</sup> *Notice*, 28 FCC Rcd at 1579, para. 31 (proposing to require only those originating long-distance providers and other covered providers with more than 100,000 retail long-distance subscribers to comply with the recording, retention, and reporting rules, and seeking comment on that proposal); see also COMPTTEL Petition at 4.

<sup>71</sup> *Notice*, 28 FCC Rcd at 1579, para. 31

monitor originating providers' call-completion performance and ensure that telephone service to rural consumers is as reliable as service to the rest of the country.<sup>72</sup>

28. We find that it is a logical outgrowth of such notice that the Commission would, and did, adopt a rule that represents a compromise position. Interested parties could reasonably anticipate that the Commission might consider the pros and cons of excluding smaller carriers and adopt a narrower exception than the one specifically proposed. Indeed, numerous parties responded to this opportunity to comment, some supporting the exception as proposed,<sup>73</sup> some opposing any exception,<sup>74</sup> and some arguing for a narrower exception.<sup>75</sup> In fact, two commenters specifically noted that the Commission could define the smaller covered provider exception using lines.<sup>76</sup> These comments support our conclusion that relying on subscriber lines rather than subscribers represents an adjustment that parties reasonably could have anticipated.<sup>77</sup>

<sup>72</sup> *Id.* at 1574, para. 13.

<sup>73</sup> *See, e.g.*, COMPTTEL Comments, WC Docket No. 13-39 at 4 (filed May 13, 2013) (COMPTTEL Comments) (supporting the Commission's proposal to exempt from the reporting requirements smaller carriers providing long distance service to 100,000 or fewer subscribers).

<sup>74</sup> *See, e.g.*, Level 3 Communications, LLC Comments, WC Docket No. 13-39 at 6 (filed May 13, 2013) (arguing that under the smaller provider exception proposed, a smaller provider could provide inexpensive, low quality call termination to rural areas, while concentrating primarily on lower cost urban terminations, and that it "makes no sense for the Commission expressly to create such arbitrage opportunities"); National Association of Regulatory Utility Commissioners (NARUC) Comments, WC Docket No. 13-39 at 10 (filed May 8, 2013) (stating that, "[u]nless there is record evidence that discloses providers with less than 100,000 retail long-distance subscribers do not experience call completion issues to rural areas, exceptions should not apply"); National Association of State Utility Consumer Advocates (NASUCA) Comments, WC Docket No. 13-39 at 21-22 (filed May 13, 2013) (no smaller carrier exemption should be adopted); Verizon Comments, WC Docket No. 13-39 at 15-16 (filed May 13, 2013) (opposing a minimum carrier size for reporting); NASUCA Reply Comments, WC Docket No. 13-39 at 20 (filed June 10, 2013) (observing that excluding smaller providers from the reporting requirements will unreasonably allow rural call completion problems "to continue for customers of small carriers," and further arguing that "[g]iven the possibly grave impacts of call completion failures on consumers, a universal reporting requirement—at least to start with—is the better approach"); The New Jersey Division of Rate Counsel Reply Comments, WC Docket No. 13-39 at 21 (filed June 11, 2013) (no smaller carrier exemption should be adopted).

<sup>75</sup> *See, e.g.*, Associated Network Partners, Inc. and Zone Telecom, Inc. Comments, WC Docket No. 13-39 at 9 (filed May 13, 2013) (arguing that reporting requirements could be limited "to facilities-based providers that serve more than 50,000 access lines"); Bay Springs Telephone Company, Inc. et al. Comments, WC Docket No. 13-39 (filed May 13, 2013) (proposing that "[a]ll service providers, except those LECs that serve a study area with fewer than 10,000 inhabitants, should be required to electronically file this data with the Commission"); Colorado Telecommunications Association, et al. Comments, WC Docket No. 13-39 at 1, 7 (filed May 13, 2013) (stating that providers with a customer base of 10,000 or more should be subject to the reporting requirements).

<sup>76</sup> Associated Network Partners, Inc. (ANPI) and Zone Telecom, Inc. (Zone Telecom) contended in their joint comments that reporting requirements could be limited "to facilities-based providers that serve more than 50,000 access lines," and that "[t]he 50,000 access line cut-off is a reasonable way to exclude carriers too small to make a difference, and too small to bear the costs of the reporting requirements." *See* Associated Network Partners, Inc. and Zone Telecom, Inc. Comments, WC Docket No. 13-39 at 9 (filed May 13, 2013). ANPI and Zone Telecom have merged. Additionally, Midcontinent Communications argues that the Commission should consider "requiring reporting by originating carriers only if they serve at least 100,000 customers (*or access lines*) in a study area. This threshold would cover all of the larger, more significant carriers, without burdening smaller carriers that serve fewer customers." *See* Midcontinent Communications (Midcontinent) Reply Comments, WC Docket No. 13-39 at 6-7 (filed June 11, 2013) (emphasis added).

<sup>77</sup> Despite its June 2013 Reply Comments advocating the use of "customers" or "access lines," after release of the *Order* Midcontinent filed a request for waiver of these rules and, in reply comments addressing its waiver request, supported COMPTTEL's assertions that the Commission did not provide adequate notice of the change from "100,000 customers to 100,000 access lines" and that smaller carriers like Midcontinent did not have the opportunity

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29. As discussed above, beyond seeking comment on a proposed 100,000 subscriber cut-off, the Commission gave notice that it might not exclude *any* providers, or might only exclude some different universe of providers.<sup>78</sup> Commenters were on notice that any exclusion would be designed to ensure that it did not “compromise the Commission’s ability to monitor rural call completion problems effectively.”<sup>79</sup> In the *Order*, the Commission made clear that it wanted “a complete picture of the rural call completion problem” in order to “address it effectively.”<sup>80</sup> The 100,000 subscriber line threshold ultimately adopted better ensures “the Commission’s ability to monitor rural call completion problems effectively” than the exclusion proposed in the *Notice* because a subscriber line-based threshold is more verifiable and administrable than a subscriber-based threshold.<sup>81</sup> Moreover, the exclusion reflects and reasonably balances the range of views in the record regarding the scope of any exclusion—including some advocating no exclusion at all.

30. In short, the *Notice* contained sufficient notice to generate a full record on the smaller covered provider exception. The final rule, which reflects input from commenters, deviated from the proposal in the *Notice* only in ways specifically designed to ensure that the exemption did not “compromise the Commission’s ability to monitor rural call completion problems effectively.”<sup>82</sup> The exception adopted in the *Order* was thus a logical outgrowth of the original proposal in the *Notice*. There is no violation of the APA’s notice requirements and thus, contrary to COMPTTEL’s assertion, no need for an additional round of comments on the smaller covered provider exception.

## 2. Regulatory Flexibility Act

31. For many of the same reasons it challenged the Commission’s decision to adopt a smaller covered provider exception based on 100,000 subscriber lines instead of 100,000 subscribers, COMPTTEL argues that the Commission failed to comply with section 604 of the Regulatory Flexibility Act.<sup>83</sup> COMPTTEL asserts that the FRFA attached to the *Rural Call Completion Order* did not include a statement of the factual, policy or legal reasons for selecting the 100,000 subscriber line threshold or

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to demonstrate the significant burdens such a change would impose. *See* Midcontinent Communications Reply Comments regarding its Request for Waiver, WC Docket No. 13-39 at 2-3 (filed May 19, 2014); Midcontinent Reply Comments, WC Docket No. 13-39 at 6-7 (filed June 11, 2013). As noted in this section, we find that the Commission did provide adequate notice.

<sup>78</sup> *Notice*, 28 FCC Rcd at 1579, para. 31.

<sup>79</sup> *Id.*

<sup>80</sup> *Order*, 28 FCC Rcd at 16167, para. 23 (explaining why it was encompassing one-way VoIP providers as well as interconnected VoIP providers). *See also, e.g., id.* at 16162, para. 15 (explaining that, given the Commission’s findings regarding the scope and nature of rural call completion problems, it was adopting rules designed to “provide evidence regarding the scope and extent of call completion problems over time”).

<sup>81</sup> *See supra* para. 22.

<sup>82</sup> *Notice*, 28 FCC Rcd at 1579, para. 31.

<sup>83</sup> COMPTTEL Petition at 12-14 (asserting that the Commission did not make available to the public a final regulatory flexibility analysis describing the impact of the rule on small entities). As part of its argument, COMPTTEL cites 5 U.S.C. § 604(a)(6) which requires an agency, when adopting a final rule, to prepare a Final Regulatory Flexibility Analysis (FRFA) which shall contain, inter alia, a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

explain why the 100,000 subscriber threshold proposed in the *Notice* was rejected.<sup>84</sup> As discussed below, the FRFA complies with the Regulatory Flexibility Act.<sup>85</sup>

32. The Commission has complied with the Regulatory Flexibility Act, and COMPTTEL's argument on this issue is without merit. We therefore deny COMPTTEL's Petition. In the FRFA, the Commission specifically noted that "[t]o the extent we received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Order."<sup>86</sup> Subsection E of the FRFA specifically addresses steps taken to minimize the significant economic impact on small entities, and references the smaller covered provider exception as one factor that reduces the economic impact of the rules on small entities.<sup>87</sup>

33. As addressed above, the Commission provided an explanation for the smaller covered provider exception adopted in the *Order*, and we respond to further relevant comments regarding that exception.<sup>88</sup> The Commission noted that some commenters argued that the threshold should be lowered, that the 100,000 subscriber-line threshold should capture as much as 95 percent of all callers, and that many providers that have fewer than 100,000 subscriber lines would not be covered providers even without the smaller provider exception because they are reselling long-distance service from other providers that make the initial long-distance call path choice.<sup>89</sup> The Commission also noted that exclusion of smaller providers should not compromise our ability to monitor rural call completion problems effectively.<sup>90</sup>

34. Accordingly, the Commission did provide factual, policy, and legal reasons for selecting the 100,000 subscriber line threshold over the proposal in the *Notice* for the smaller covered provider exception. COMPTTEL's Regulatory Flexibility Act argument amounts essentially to a restatement of its earlier argument that the Commission failed to provide an adequate explanation for the threshold it adopted.

### C. Sprint Petition

35. Sprint raises several issues in its Petition.<sup>91</sup> First, Sprint asks us to reconsider the Commission's decision "to use the required call completion reports as the basis for subsequent enforcement action."<sup>92</sup> Second, Sprint asserts that the Commission largely relied on summaries of surveys performed by the RLECs and urges the Commission to make the RLEC surveys available in their entirety

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<sup>84</sup> See COMPTTEL Petition at 12-14; see also HyperCube Comments at 1-4; XO Comments at 2; Sprint Reply at 3; TelePacific/Mpower Reply at 2.

<sup>85</sup> 5 U.S.C. § 601, et seq.

<sup>86</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16221, Appx. D, para. 8.

<sup>87</sup> See *id.* at 16227, Appx. D, para. 30; see also *id.* at 16221, Appx. D, para. 7 ("Our regulations are carefully targeted to help address the problems with completing calls in rural areas while minimizing the burdens of compliance for all covered providers, including small entities.").

<sup>88</sup> See *supra* paras. 20-30.

<sup>89</sup> See *Rural Call Completion Order*, 28 FCC Rcd at 16168-69, para. 27.

<sup>90</sup> *Id.*

<sup>91</sup> See generally Sprint Petition. The Public Utility Commission of Oregon, with the support of the Nebraska Public Service Commission and the Rural Associations (NECA, NTCA, ERTA, and WTA) oppose the Sprint Petition. See Nebraska Comments at 1; Oregon Opposition at 1; Rural Associations Opposition at i.

<sup>92</sup> Sprint Petition at 1. On March, 4, 2014, XO Communications, LLC filed comments in support of Sprint's request that the Commission not use the data collected to initiate enforcement actions. XO Comments at 1.

for independent review.<sup>93</sup> Finally, Sprint argues that the Commission's compliance burden estimate is too low.<sup>94</sup> For the reasons discussed below, we deny Sprint's Petition.

### 1. Use of Call Completion Reports for Enforcement Action

36. Sprint argues that the Commission should reconsider its decision "to use the required call completion reports as the basis for subsequent enforcement action," asserting that the Commission "has provided no guidance as to what behaviors by covered carriers it considers unreasonable, or what performance results are actionable and therefore could trigger enforcement action."<sup>95</sup> Sprint suggests that the Commission should "make public a list of call completion practices it deems acceptable."<sup>96</sup> For the reasons discussed below, we deny Sprint's Petition on this issue.

37. First we note that, although the Commission adopted the recordkeeping, retention, and reporting rules to "substantially increase [its] ability to monitor and redress problems associated with completing calls to rural areas,"<sup>97</sup> the *Order* did not suggest that the reports covered providers file with the Commission would constitute the sole basis for an enforcement action.<sup>98</sup> Rather, the *Order* stated that the recording, retention, and reporting requirements may "aid[]," "enhance," and "inform" enforcement actions.<sup>99</sup> This language makes clear that the reports are intended as a means for identifying possible areas for further inquiry, not for forming the sole basis for enforcement actions. Any action initiated by the Enforcement Bureau would offer providers the evidentiary opportunities afforded in any enforcement proceeding.<sup>100</sup> Furthermore, the *Order* emphasizes that enforcement actions are not the only reason for adopting the rules; the rules will also help the providers themselves identify and correct call completion problems. The *Order* explains that, once providers begin collecting call completion data under the rural call completion rules, "many will have greater insight into their performance and that of their intermediate providers than they have had in the past."<sup>101</sup>

38. Second, the Commission has provided ample guidance regarding what it considers unacceptable call completion practices.<sup>102</sup> The Wireline Competition Bureau has issued two declaratory

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<sup>93</sup> Sprint Petition at 5-6.

<sup>94</sup> Sprint Petition at 6-8. XO and HyperCube submitted comments in support of Sprint's argument regarding the burdens associated with the recordkeeping, retention, and reporting requirements. HyperCube Comments at 1-4; XO Comments at 1-4.

<sup>95</sup> Sprint Petition at 1. On March, 4, 2014, XO Communications, LLC filed comments in support of Sprint's request that the Commission not use the data collected to initiate enforcement actions. XO Comments at 4. The Public Utility Commission of Oregon, with the support of the Nebraska Public Service Commission, and the Rural Associations (NECA, NTCA, ERTA, and WTA) oppose the Sprint Petition on all three aspects. Oregon Opposition at 1-4; Nebraska Comments at 1; Rural Associations Opposition at 1-5.

<sup>96</sup> Sprint Petition at 3.

<sup>97</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16164, para. 19. The Commission states that these data are necessary to identify, analyze, address, and redress call completion problems. *See, e.g., id.* at 16174-75, 16185, paras. 40, 42, 67.

<sup>98</sup> *See* Oregon Opposition at 1-2 (opposing the Sprint Petition and stating that the reports, by themselves, are not the basis for subsequent enforcement action).

<sup>99</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16155, 16164, 16169, paras. 2, 19, 29.

<sup>100</sup> For a primer on the Commission's enforcement processes, including the multiple steps at which a provider may furnish exculpatory information, see <http://www.fcc.gov/encyclopedia/enforcement-primer>.

<sup>101</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16169-70, para. 29.

<sup>102</sup> Sprint asserts that "[t]he Commission should reconsider its decision to use the required call completion reports as the basis for enforcement action, because [the Commission] has provided no guidance as to what behaviors by covered carriers it considers unreasonable, or what performance results are actionable." Sprint Petition at 1.

rulings clarifying that carriers are prohibited from blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges,<sup>103</sup> and clarifying the scope of the Commission's longstanding prohibition on blocking, choking, reducing, or restricting telephone traffic, which may violate section 201 or 202 of the Act.<sup>104</sup> The failure of a carrier to investigate evidence of a rural call delivery problem or to correct a problem of degraded service about which it knows or should know also may lead to enforcement action.<sup>105</sup> In the 2011 *USF/ICC Transformation Order*, the Commission addressed the prohibition on call blocking and, *inter alia*, made clear that the prohibition applies to VoIP-to-PSTN traffic and providers of interconnected VoIP and "one-way" VoIP services.<sup>106</sup> We thus reject Sprint's assertion that the Commission has not adequately identified prohibited practices.<sup>107</sup>

39. Finally, Sprint asserts that the required reports will not, in many cases, identify the reason a call failed to complete, and there are multiple factors that cause rural call completion failures, many of which are beyond the control of the long-distance provider.<sup>108</sup> As we have explained, any enforcement action would give a covered provider an opportunity to provide exculpatory evidence.<sup>109</sup> Furthermore, Sprint's assertion that the rules impose "the burden of an investigation, and the threat of enforcement action, entirely on long distance carriers" is incorrect.<sup>110</sup> On the contrary, the Order emphasized that while the recording, retention, and reporting requirements do not apply to intermediate providers, "the

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<sup>103</sup> *Developing an 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, 1351-52, paras. 1-3 (Wireline Comp. Bur. 2012) (*2012 Declaratory Ruling*); *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) (*2007 Declaratory Ruling*).

<sup>104</sup> *See 2012 Declaratory Ruling*. In the *2012 Declaratory Ruling*, the Wireline Competition Bureau stated that "it is an unjust and unreasonable practice in violation of section 201 of the Act for a carrier that knows or should know that it is providing degraded service to certain areas to fail to correct the problem or to fail to ensure that intermediate providers, least-cost routers, or other entities acting for or employed by the carrier are performing adequately. This is particularly the case when the problems are brought to the carrier's attention by customers, rate-of-return carriers serving rural areas, or others, and the carrier nevertheless fails to take corrective action that is within its power." *Id.* at 1356, para. 12. The Bureau further clarified that "adopting or perpetuating routing practices that result in lower quality service to rural or high-cost localities than like service to urban or lower cost localities (including other lower cost rural areas) may, in the absence of a persuasive explanation, constitute unjust or unreasonable discrimination in practices, facilities, or services and violate section 202 of the Act. Although there may be valid reasons for discrepancies in performance, such discrepancies would be subject to examination to determine whether they are unjustly or unreasonably discriminatory." *Id.* at 1358, para. 14; *see also 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, 17903, 18028-29, paras. 734, 973-974 (2011) (*USF/ICC Transformation Order*), *aff'd sub nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>105</sup> *See 2012 Declaratory Ruling*, 27 FCC Rcd at 1355-56, 1358-59, paras. 12, 16; *see also Rural Call Completion FCC Enforcement Advisory*, Enforcement Advisory No. 2013-6, Public Notice, 28 FCC Rcd 10347 (Enforcement Bur. 2013) (reminding providers of long distance services of their obligations when served with an informal complaint about rural call completion).

<sup>106</sup> *USF/ICC Transformation Order*, 26 FCC Rcd at 17903, 18028-29, paras. 734, 973-74.

<sup>107</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16165, para. 19.

<sup>108</sup> Sprint Petition at 3.

<sup>109</sup> *See supra* para. 37.

<sup>110</sup> Sprint Petition at 1.



Enforcement Bureau continues to have the authority to investigate and collect additional information from intermediate providers when pursuing specific complaints and enforcement actions.”<sup>111</sup> The Commission also encouraged rural ILECs to report specific information and sought comment on whether the Commission should adopt or encourage additional rural ILEC reporting.<sup>112</sup> For all of these reasons, we decline to reconsider our recognition of the potential use of call completion reports in enforcement actions, and we deny Sprint’s Petition on this issue.

## 2. Availability of RLEC Surveys for Independent Review

40. Sprint argues that, to justify adopting the recording, retention, and reporting rules, the Commission relied largely on summaries of surveys of RLECs’ call completion experiences filed with the Commission by NTCA. It asserts that the Commission should make these surveys available in their entirety for independent review.<sup>113</sup> Sprint also asserts that the Commission should reconsider whether a more limited data collection, such as one-time sample studies, would be a more appropriate first step to address rural call completion problems.<sup>114</sup>

41. Sprint’s Petition overstates the Commission’s reliance on the RLEC surveys. The Commission based its decision to promulgate rural call completion rules on a broad array of information filed in this proceeding and in predecessor dockets.<sup>115</sup> This base of information included, among other things, numerous comments and filings in the docket and preceding dockets, the Commission’s experience with and investigations of rural call completion complaints, and the information gained from a workshop held at the Commission which addressed rural call completion problems.<sup>116</sup> The Commission found comments and *ex parte* letters filed with the Commission by the Rural Associations and the Commission’s state partners to be especially persuasive, “given their direct experience with complaints about call completion performance.”<sup>117</sup> The Commission did rely, in part, on the results of a test conducted by NECA in two of the Rural Association filings, but these results were only one piece of information that the Commission relied upon as a basis for adopting the *Order*.<sup>118</sup> Other entities also filed comments noting the existence of call completion problems in rural areas.<sup>119</sup> The Commission also relied

<sup>111</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16168, para. 26. In the Further Notice of Proposed Rulemaking, the Commission also sought comment on whether it should impose rules on intermediate providers and its authority to do so. *Id.* at 16205-06, paras. 122-123.

<sup>112</sup> *Id.* at 16198-99, 16206-07, paras. 107-108, 128-129.

<sup>113</sup> Sprint Petition at 5-6.

<sup>114</sup> *Id.*

<sup>115</sup> See *Rural Call Completion Order*, 28 FCC Rcd at 16155, 16161-162, paras. 14-15 & nn. 42-45, 48.

<sup>116</sup> See *FCC Announces Agenda for October 18 Rural Call Completion Workshop*, Public Notice, 26 FCC Rcd 14351 (2011), recording available at <http://www.fcc.gov/events/rural-call-completion-workshop> (last accessed Aug. 15, 2014); see also *Rural Call Completion Order*, 28 FCC Rcd at 16156, para. 3.

<sup>117</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16162, para. 15.

<sup>118</sup> See Letter from Colin Sandy, Government Relations Counsel, NECA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-135, 01-92, 11-39 (filed May 21, 2012) (May 2012 NECA, et al. Letter), available at <http://apps.fcc.gov/ecfs/comment/view?id=6017037194> (last accessed Aug. 15, 2014); Letter from Colin Sandy, Government Relations Counsel, NECA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 07-135, 11-39, CC Docket No. 01-92 at Attach. A (filed Aug. 22, 2013) (August 2013 NECA et al. Letter), available at <http://apps.fcc.gov/ecfs/document/view?id=7520939534> (last accessed Aug. 18, 2014), also available at <https://prodnet.www.neca.org/publicationsdocs/wwpdf/061311callterm.pdf> (last accessed Aug. 15, 2014).

<sup>119</sup> See *Rural Call Completion Order*, 28 FCC Rcd at 16161-62, nn.42-45; see, e.g., COMPTTEL Petition at 2; Comments of Comcast Corp., WC Docket No. 13-39 at 1-2 (filed Jan. 16, 2014); HyperCube Comments at 1; Comments of NARUC, WC Docket No. 13-39 at 3 (filed Jan. 16, 2014) (NARUC Comments); Comments of NASUCA, WC Docket No. 13-39 at 2 (filed Feb. 21, 2014); Comments of NECA, et al., GN Docket No. 09-51, WC (continued . . .)

on its own significant experience receiving and investigating informal call completion complaints.<sup>120</sup> Rather than being critical factual information on which our decision hinged, the information submitted about the RLEC surveys was supplementary data that confirmed the various other pieces of evidence in the record. Even absent these surveys, we would find a strong basis in the record to adopt the recording, retention, and reporting rules.<sup>121</sup> For these reasons, we are not persuaded that we should revisit the Commission's use of NECA's summaries of its RLEC surveys, the availability of the NECA RLEC survey results for independent review,<sup>122</sup> or the implementation of a new data sample before the rules take effect. We also separately affirm our conclusion that ongoing data collection, rather than a one-time collection, is more likely to address call completion problems, which have been ongoing and extensive. We therefore deny Sprint's petition on this issue.

### 3. Industry Compliance Costs

42. Sprint reiterates arguments about the burden of compliance that it made during the pendency of the rulemaking.<sup>123</sup> These arguments do not warrant consideration by the Commission because Sprint relies on arguments that the Commission considered and rejected in the *Order*.<sup>124</sup> Accordingly, we dismiss this part of Sprint's Petition.

43. Evaluating Sprint's arguments on the merits, however, we find that reconsideration of the Commission's burden analysis is not warranted and deny this part of Sprint's Petition. In the *Order*, the Commission determined that the benefits of these rules outweigh the burdens.<sup>125</sup> Sprint asserts that the Commission should re-evaluate the estimated industry-wide compliance costs these rules impose on covered providers.<sup>126</sup> Sprint asserts that insufficient data has been submitted to calculate the total on-

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Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 at 1 (filed Feb. 24, 2012); Letter from Thomas Cohen, Counsel to ACA, Kelley Drye & Warren LLP, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 at 1 (filed Oct. 22, 2013); Letter from John Harrington, Senior Vice President, Inteliquent, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 at 2 (filed Sept. 23, 2013) (Inteliquent *Ex Parte* Letter); Letter from Jill Canfield, Director of Legal and Industry, Assistant General Counsel, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 at 2 (filed Aug. 19, 2013) (NTCA, WTA, NECA *Ex Parte* Letter); Public Service Commission of Wisconsin, *Rural Call Completion*, <http://psc.wi.gov/utilityinfo/tele/teleConsumer/ruralCustomers.htm> (last visited July 1, 2014).

<sup>120</sup> See *Rural Call Completion Order*, 28 FCC Rcd at 16162, para. 15 & n.47.

<sup>121</sup> See, e.g., *id.* at 16155, 16162, paras. 1, 15 & n.48.

<sup>122</sup> We note that these surveys were not conducted by the Commission, but information about the surveys was filed in the docket by the Rural Associations. See May 2012 NECA, et al. Letter; August 2013 NECA et al. Letter at Attach. A. Further, although provider names are redacted from the summary of test results, NECA specifically stated that it would provide tested carriers and providers call detail associated with all calls using their service. May 2012 NECA, et al. Letter at 2.

<sup>123</sup> Sprint Petition at 6-8.

<sup>124</sup> See 47 C.F.R. 1.429(1)(3); *Rural Call Completion Order*, 28 FCC Rcd at 16174-75, 16183-84, 16190, 16193, paras. 42, 63-64, 81, 90; see also Rural Associations Opposition at 5 (arguing that the Commission considered and rejected Sprint's arguments about the burden of compliance in the *Order* and Sprint has submitted nothing that warrants reconsideration).

<sup>125</sup> See, e.g., *Rural Call Completion Order*, 28 FCC Rcd at 16174-75, 16183-84, paras. 42, 64.

<sup>126</sup> Sprint Petition at 6-8. HyperCube and XO Communications, LLC filed comments in support of Sprint's Petition. See HyperCube Comments at 1-4 (heavy burdens of new obligations, including the burden of determining if an entity is a covered provider, for example, if the provider is both an intermediate provider and other provider); XO Comments at 1-5. The Public Utility Commission of Oregon, with the support of the Nebraska Public Service

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going costs likely to be incurred by covered providers to comply with the new rules.<sup>127</sup> It argues that numerous carriers currently do not collect at least some of the information required under the new rules and at least three carriers have estimated that it would cost each of them millions of dollars to comply with those rules.<sup>128</sup>

44. As explained further below, the Commission adopted the *Order* only after carefully weighing the costs and benefits of the new requirements, including record evidence alleging compliance costs on the part of covered providers.<sup>129</sup> Sprint nonetheless contends that the Commission should “assess factually the relative costs and benefits of its data collection retention and reporting rules.”<sup>130</sup> Pursuant to the Paperwork Reduction Act of 1995 (PRA), the Commission will conduct a careful analysis of any reporting and recordkeeping requirements imposed on the public.<sup>131</sup> The Commission has begun that analysis, and five entities have submitted comments, including Sprint and HyperCube.<sup>132</sup> The recordkeeping, retention, and reporting requirements adopted in the *Order* will not become effective until an announcement is published in the Federal Register of the Office of Management and Budget (OMB)

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Commission and the Rural Associations, opposes the Sprint Petition. See Oregon Opposition at 1-4; Nebraska Comments at 1; Rural Associations Opposition at 1-5.

<sup>127</sup> Sprint Petition at 7.

<sup>128</sup> *Id.* (citing Letter from Brian J. Benison, Director, Federal Regulatory, AT&T, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 at 1 (filed Oct. 23, 2013) (AT&T *Ex Parte* Letter) (saying compliance will cost millions); Letter from John E. Benedict, Vice President, Federal Regulatory Affairs, CenturyLink, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 (filed Oct. 23, 2013) (CenturyLink *Ex Parte* Letter) (arguing that compliance will cost millions); Letter from Michael Saperstein, Vice President, Federal Regulatory Affairs, Frontier Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 (filed Oct. 23, 2013) (Frontier *Ex Parte* Letter) (supporting AT&T and CenturyLink’s cost estimates)).

<sup>129</sup> See, e.g., *Rural Call Completion Order*, 28 FCC Rcd at 16174-75, 16183-84, paras. 42, 64; see also *id.* at 16168-69, 16177-78, paras. 27, 49 (exempting smaller covered providers from our reporting rules in an attempt to reduce the compliance burden on such entities, and requiring covered providers to retain records only for calls to rural incumbent LECs in order to “substantially reduce the burden of compliance” on covered entities); Comments of Sprint Nextel Corporation, WC Docket No. 13-39 at 18 (filed May 13, 2013); AT&T *Ex Parte* Letter at 1; CenturyLink *Ex Parte* Letter at 1; Frontier *Ex Parte* Letter at 1-2.

<sup>130</sup> Sprint Petition at 8.

<sup>131</sup> As part of the analysis required under the PRA, the Commission must evaluate the need for specific information collections, draft a functional description of the information to be collected and a plan for the collection of that information, and determine a specific, objectively supported estimate of the burden of the proposed information collection upon the reporting parties, among several other obligations. See 44 U.S.C. § 3506(c)(1)(A)-(C).

<sup>132</sup> See Federal Communications Commission, *Rural Call Completion Recordkeeping and Reporting*, WC Docket No. 13-39, 78 Fed. Reg. 21891, 21892 (Apr. 22, 2013); Federal Communications Commission, *Rural Call Completion*, WC Docket No. 13-39, 78 Fed. Reg. 79448, 79449 (Dec. 30, 2013). Pursuant to the Paperwork Reduction Act, the Commission must obtain approval from the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) prior to conducting an information collection from 10 or more entities. As part of this process, the Commission is required to publish a notice in the Federal Register seeking comment on the proposed information collection and to submit the proposed collection (including a supporting statement explaining why the collection is necessary) to OMB for review and approval. See Federal Communications Commission, *Rulemaking Process at the FCC*, <http://www.fcc.gov/encyclopedia/rulemaking-process-fcc> (last visited July 28, 2014); Memorandum from Cass R. Sunstein, Administrator, Executive Office of the President, Office of Management and Budget, on Information Collection under the Paperwork Reduction Act to the Heads of Executive Departments and Agencies, and Independent Regulatory Agencies 2 (Apr. 7, 2010), available at [http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer\\_04072010.pdf](http://www.whitehouse.gov/sites/default/files/omb/assets/inforeg/PRAPrimer_04072010.pdf).

approval and an effective date of the rules. While we deny Sprint's Petition, several of the concerns raised by Sprint, XO and HyperCube will be addressed in the context of the PRA analysis.<sup>133</sup>

45. Sprint contends that industry compliance costs will exceed \$100 million and that it has updated its burden analysis to reflect new compliance cost information and the impact of the rules adopted.<sup>134</sup> Much of the information Sprint provides to support these assertions, including its own cost estimates, are not new and were submitted prior to the Commission's adoption of the rules in the *Order*.<sup>135</sup> This information includes estimates of compliance costs that do not take into account ways the Commission reduced the burden of the proposed rules in the *Order*. For example, the Commission changed the rule requiring retention of call detail records to apply only to call attempts to rural ILECs, a relatively small percentage of total call attempts, and determined that call attempts to nonrural incumbent LECs need not be retained.<sup>136</sup> Sprint also refers to a cost estimate in a request for waiver filed by Midcontinent Communications after the *Order* was released, but that estimate is consistent with or less than other estimates already considered by the Commission.<sup>137</sup> Moreover, the changes we adopt in this Reconsideration Order will reduce providers' costs. The USTelecom/ITTA cost estimate that Sprint refers to includes the cost of collecting, retaining, and reporting data for on-net intraLATA interexchange toll traffic that we now exempt from the rules.<sup>138</sup>

46. Sprint states that the Commission's PRA analysis estimates that 225 entities will be required to file the new call completion reports, all of those entities will incur some compliance costs, some will need to make system and/or staffing changes to comply with the new rules, and covered providers will continue to incur recurring compliance costs for years to come.<sup>139</sup> Sprint over-estimates the number of entities required to comply with the new rules. It misunderstands the PRA analysis, which, as noted above, includes voluntary quarterly reporting by RLECs of a reduced set of data. The majority of the 225 entities are RLECs that may voluntarily file and that may have this information readily available.

47. Finally, Sprint states that the information provided pursuant to the new rules will provide limited information on the root cause of any call termination problems and, if the likely costs exceed the

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<sup>133</sup> Executive Order 13579 stated that, "[t]o the extent permitted by law, independent regulatory agencies should comply with" the provisions of Executive Order 13563, but independent agencies, such as the Commission, are not required to conduct an extensive cost-benefit analysis in advance of proposing or adopting new regulations. See Exec. Order No. 13579, 76 Fed. Reg. 41587 (July 11, 2011).

<sup>134</sup> Sprint Reply at 1-2.

<sup>135</sup> See Sprint Petition at 7 (citing Comments of Sprint Nextel Corporation, WC Docket No. 13-39, at 18 (filed May 13, 2013); AT&T *Ex Parte* Letter; CenturyLink *Ex Parte* Letter; Frontier *Ex Parte* Letter).

<sup>136</sup> See *Rural Call Completion Order*, 28 FCC Rcd at 16177-78, para. 49.

<sup>137</sup> Midcontinent Communications Request for Waiver, WC Docket No. 13-39 at ii (filed Jan. 23, 2014) (asserting that its preliminary analysis of its compliance costs has found that even partial compliance would cost at least \$150,000 in equipment costs and the addition of at least one additional full-time employee, that it has been unable to develop solutions that would ensure full compliance with the reporting rules, that these costs are unwarranted in view of Midcontinent's size and efforts to fulfill the Commission's call completion goals). Subject to some conditions, Midcontinent requests that the Commission waive the rural call completion reporting requirements until Midcontinent serves 250,000 retail access lines or for three years, whichever period is shorter. *Id.* Midcontinent argues that it is a smaller provider and would not be a covered provider, but for the above-described change in the smaller provider exception from 100,000 subscribers to 100,000 subscriber lines. See *supra* paras. 19-30.

<sup>138</sup> In this Order on Reconsideration, we reduce the burden of compliance by granting USTelecom/ITTA's Petition and removing the requirement for recordkeeping, retention, and reporting of on-net intraLATA toll calls. That Petition estimated that industry-wide compliance with the rules for on-net intraLATA toll calls alone would have cost in excess of \$100 million. USTelecom/ITTA Petition at 6. Sprint also references assertions from Carolina West, whose petition we address *infra* at Section III.E.

<sup>139</sup> Sprint Petition at 7-8.

anticipated benefits, the Commission should adopt more limited measures, such as allowing covered providers to perform a statistically significant sample study or to retain fewer months of data.<sup>140</sup> These arguments were fully addressed and disposed of in the Order, and Sprint provides no new information warranting reconsideration.<sup>141</sup> XO and HyperCube support Sprint's Petition and argue that not all providers collect the information required, but neither provides new information or arguments warranting reconsideration.<sup>142</sup>

48. HyperCube asserts that the Commission "overlooked the substantial burden imposed on many providers to determine whether they are in fact 'covered providers' and, as a result, has also greatly underestimated the number of burdened providers."<sup>143</sup> We disagree. The Commission recognized the burden of determining if a provider is a covered provider. In the *Order*, the Commission attempted to minimize any such burden, by providing examples of how to determine whether a provider is a covered provider and noting that some providers will need to segregate originated traffic from intermediary traffic.<sup>144</sup> HyperCube's assertions that we underestimated the number of burdened providers because we did not include the substantial burden imposed on many providers just to determine whether they are in fact "covered providers" is more appropriately addressed in the PRA context.<sup>145</sup> HyperCube filed comments regarding the Commission's specific burden estimate in the PRA context and these matters will be addressed in the context of that Paperwork Reduction Analysis.

49. HyperCube also argues that the Commission did not consider the possibility that providers could be covered providers even if they operate primarily as intermediate providers.<sup>146</sup> Although the Commission did not apply these rules to entities acting exclusively as intermediate providers, it did apply the rules to providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines.<sup>147</sup> The Commission recognized that such providers might also serve as intermediate providers and in fact stated that "a covered provider that also serves as an intermediate provider for other providers may—but need not—segregate its originated traffic from its intermediary traffic in its recording and reporting, given the additional burdens such segregation may impose on such providers."<sup>148</sup> Accordingly, the Commission did not overlook the fact that providers that may be intermediate providers in some instances and covered providers in other instances.

50. For all of these reasons, we decline to reconsider the Commission's finding that the benefits of these rules outweigh the burdens of compliance. Burden arguments raised in the PRA context will be considered and addressed in compliance with the PRA.

**D. Transcom Petition: Application of Ring Signaling Rule to Intermediate Providers That Are Not Common Carriers**

51. In the *Order*, the Commission adopted a rule that prohibits "originating and intermediate

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<sup>140</sup> *Id.* at 8.

<sup>141</sup> See, e.g., *Rural Call Completion Order*, 28 FCC Rcd at 16162, 16190, paras. 15-16, 81 n.219.

<sup>142</sup> XO notes that it is still in the process of evaluating the costs and time necessary to collect the required data and implement the reporting requirements. XO Comments at 4.

<sup>143</sup> HyperCube Comments at 3.

<sup>144</sup> *Rural Call Completion Order* at 16164-66, para. 20 n.64.

<sup>145</sup> See HyperCube Comments at 3.

<sup>146</sup> *Id.*

<sup>147</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16164-66, 16168, paras. 19-20, 26; see also *id.* at 16165, para. 20 n.64.

<sup>148</sup> *Id.* at 16165, para. 20 n.64.

providers . . . from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted.”<sup>149</sup> The Commission applied this rule to, among others, “intermediate providers that are not common carriers.”<sup>150</sup> Transcom requests reconsideration of this rule “insofar as [it] applies to ‘intermediate providers’ that are not common carriers,” arguing that the Commission exceeded its legal authority by extending the rule to such providers.<sup>151</sup> For the reasons discussed below, we dismiss Transcom’s Petition.

52. As an initial matter, we must determine whether consideration of Transcom’s petition is procedurally appropriate under section 1.429(b) of the Commission’s rules.<sup>152</sup> As Transcom notes, it did not submit comments in response to the *Notice* or conduct any *ex parte* meetings in this docket.<sup>153</sup> Thus Transcom did not previously present any of the facts or arguments in its Petition to the Commission, and our review of the record indicates that no party to the proceeding raised facts or arguments relating to the Commission’s authority to require intermediate providers that are not common carriers to comply with the ring signaling rule. Transcom asserts that another entity presented the relevant legal issue in an *ex parte* letter and that the Commission thus considered and addressed the matter in the *Order*.<sup>154</sup> However, the *ex parte* letter from the VON Coalition that Transcom cites did not present the same issues that Transcom now presents.<sup>155</sup> Neither the VON Coalition’s letter cited by Transcom nor its comments and reply comments in this proceeding, which the letter references, raised any facts or arguments relating to the Commission’s authority to require intermediate providers that are not common carriers to comply with the ring signaling rule.<sup>156</sup>

53. Section 1.429(b) of the Commission’s rules provides that a petition for reconsideration that relies on facts or arguments which have not previously been presented to the Commission will be granted only if: (1) the facts or arguments relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; (2) the facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or (3) the Commission determines that consideration of the facts or arguments relied on is required in the public interest.<sup>157</sup> Because Transcom’s Petition “relies on facts or arguments which have not previously been presented to the Commission,” we may grant the Petition only if one of the three criteria described above is met.

54. Transcom makes no effort in its Petition to argue that its reconsideration request meets

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<sup>149</sup> *Id.* at 16202, para. 115.

<sup>150</sup> *Id.* at 16203, para. 117.

<sup>151</sup> Transcom Petition at ii-iii. While Transcom continues to assert that it is not an intermediate provider, it notes that the Commission has disagreed and assumes it is an intermediate provider for purposes of its Petition. *Id.* at ii, 2-4. The 10<sup>th</sup> Circuit recently agreed with the Commission regarding this matter. *See In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>152</sup> 47 C.F.R. § 1.429(b).

<sup>153</sup> Transcom Petition at ii, 1-2. Transcom states that it is requesting reconsideration to preserve the right to judicial review. *Id.* at ii, 2. In this Order on Reconsideration, we address Transcom’s Petition. The courts will determine whether Transcom has adequately preserved its right to judicial review.

<sup>154</sup> Transcom Reply at 3.

<sup>155</sup> *See* Letter from Glenn S. Richards, Executive Director, Voice On the Net (VON) Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 13-39 (filed Oct. 23, 2013).

<sup>156</sup> *See id.*; VON Coalition Comments, WC Docket No. 13-39 (filed May 13, 2013) (VON Coalition Comments); VON Coalition Reply Comments, WC Docket No. 13-39 (filed June 11, 2013) (VON Coalition Reply Comments).

<sup>157</sup> 47 C.F.R. § 1.429(b); *see also* 47 U.S.C. § 405(a); 47 C.F.R. § 1.429(j).

the requirements of section 1.429(b). In its reply to an opposition filed by the Rural Associations, however, Transcom argues that the United States Court of Appeals for the District of Columbia Circuit's recent decision in *Verizon v FCC* constitutes an "intervening event" that justifies consideration of its Petition under section 1.429(b)(1).<sup>158</sup> We disagree. Transcom reads *Verizon* to hold that "the Commission cannot use Title I to justify imposing common carrier duties on non-common carriers."<sup>159</sup> But the idea that the Commission cannot regulate services that have not been classified as common carrier services in a way that result in *per se* common carriage did not originate in the *Verizon* opinion; the courts and the Commission have long recognized that concept.<sup>160</sup> The *Verizon* court merely applied this precedent to the Commission's Open Internet rules and found that parts of those rules impermissibly required *per se* common carriage in that context.<sup>161</sup> For this reason, the fact that the *Verizon* court discussed limitations on the Commission's ability to regulate non-common carriers does not make the *Verizon* opinion an "event[] which [has] occurred or circumstance[] which [has] changed since the last opportunity to present such matters to the Commission" for purposes of section 1.429(b)(1).

55. In this same set of reply comments, Transcom also argues that reconsideration is appropriate under section 1.429(b)(2) because the legal question was presented by the VON Coalition and disposed in the *Order*.<sup>162</sup> As we have explained, Transcom's assertion that the relevant legal issue was raised in the record prior to adoption of the *Order* is incorrect.<sup>163</sup> Even if it were correct, however, whether or not "the legal question was presented and disposed" is irrelevant to whether a petition satisfies section 1.429(b)(2), which applies only where "the facts or arguments relied on were unknown to petitioner until after his last opportunity to present them to the Commission." Transcom makes no argument based on the requirements of section 1.429(b)(2); accordingly, this argument also fails.<sup>164</sup>

56. Transcom further argues that consideration of its petition is required by the public interest and thus warrants consideration under section 1.429(b)(3).<sup>165</sup> But Transcom does not support this assertion except to say that the *Verizon* decision "directly undercuts the primary rationale" for the ring signaling rule.<sup>166</sup> As we have explained, the *Verizon* opinion did not change the law in any way bearing

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<sup>158</sup> Transcom Reply at 1-7 (citing *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014)); 47 C.F.R. § 1.429(b)(1)-(2).

<sup>159</sup> Transcom Reply at 1.

<sup>160</sup> See, e.g., *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WC Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411, 5413 (2011); *Cellco Partnership v. FCC*, 700 F.3d 534, 537-38 (D.C. Cir. 2012); *FCC v. Midwest Video Corp.*, 440 U.S. 689, 99 S.Ct. 1435, 1436, 59 L.Ed.2d 692 (1979); *United States v. Midwest Video Corp.*, 406 U.S. 649, 654, 92 S.Ct. 1860, 1863, 32 L.Ed.2d 390 (1972); *United States v. Sw. Cable Co.*, 392 U.S. 157, 172, 88 S.Ct. 1994, 2002, 20 L.Ed.2d 1001 (1968).

<sup>161</sup> See *Verizon v. FCC*, 740 F.3d 623 (D.C. Cir. 2014).

<sup>162</sup> Transcom Reply at 3.

<sup>163</sup> See *supra* paras. 52, 55 (discussing the VON Coalition's pleadings).

<sup>164</sup> Even if Transcom had argued that the facts or arguments it relied on were "unknown to petitioner until after [its] last opportunity to present them to the Commission," Transcom likely would not have satisfied the additional requirement that it "could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity." 47 C.F.R. § 1.429(b)(2). The *Rural Call Completion Order* and *Notice* refer to an October 2011 letter from Transcom, which was filed prior to the initiation of the rulemaking docket but nonetheless suggests a general familiarity with the Commission's rural call completion efforts. See *Rural Call Completion Order*, 28 FCC Rcd at 16200, para. 111 n.281; *Notice*, 28 FCC Rcd at 1582, para. 39, n.63. It is therefore difficult to imagine that Transcom "could not through the exercise of ordinary diligence have learned of the facts or arguments" raised in its Petition in time to present them to the Commission in a timely fashion.

<sup>165</sup> See Transcom Reply at 4; 47 C.F.R. § 1.429(b)(3).

<sup>166</sup> Transcom Reply 4.

on the Commission's decision to apply the ring signaling rule to intermediate providers that are not common carriers.<sup>167</sup> Moreover, we independently discern no other fact or argument set forth in the Transcom Petition that would require its petition to be considered. Accordingly, consideration of Transcom's petition is not "required in the public interest." Because Transcom's Petition fails to satisfy any of the criteria of section 1.429(b), we dismiss the Petition.

**E. Carolina West Petition: Definition of Covered Provider**

57. Carolina West asks us to modify the definition of "covered provider" as it applies to the smaller covered provider exception to our recordkeeping, retention, and reporting rules.<sup>168</sup> Specifically, Carolina West proposes that we replace "aggregated over all of the provider's affiliates" in the definition of covered provider with "aggregated over all entities under common control with such provider."<sup>169</sup> Carolina West argues that, when determining whether a provider makes the initial call path choice for more than 100,000 subscriber lines, a provider should not have to include "lines served by non-controlling minority owners."<sup>170</sup> In support of its petition, Carolina West states that it is "common for rural wireless carriers to have passive investors who are themselves carriers that provide long-distance service" and that these investors "do not and cannot make the ultimate determination regarding the call routing practices of the providers in which they hold such passive investments."<sup>171</sup> Carolina West reports that, although it serves fewer than 100,000 subscriber lines, it "believes that it would be subject to the full scope of the new retention and reporting requirements because one or more of its minority investors provide long-distance service and make the initial call path decision for enough customer lines such that, in the aggregate, [Carolina West] and its 'affiliates' would exceed the 100,000 line *de minimis* threshold."<sup>172</sup>

58. In the *Order*, the Commission concluded that the recordkeeping, retention, and reporting rules should apply to "covered providers," i.e., providers of long-distance voice service that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, including lines served by the providers' affiliates.<sup>173</sup> The 100,000 line threshold forms a basis for the "exception for smaller covered providers" adopted in the *Order*.<sup>174</sup> In adopting this exception, the Commission noted that the recordkeeping, retention, and reporting requirements would still "capture as much as 95 percent of all callers" and that "a covered provider qualifies for this exception only if it and all its affiliates, as defined in section 3(2) of the Act ... together made the initial long-distance call path choice for 100,000 or fewer total business or residential subscriber lines."<sup>175</sup>

59. We acknowledge Carolina West's concerns about the burdens on small providers associated with complying with the rule. On the record before us, however, we are unable to conclude that the Commission's goals would continue to be met if we changed our rules to exempt additional providers from compliance. For example, the Commission noted that it was not "compromis[ing] our

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<sup>167</sup> See *supra* para. 54.

<sup>168</sup> Carolina West Petition 3-5.

<sup>169</sup> *Id.* at 5.

<sup>170</sup> *Id.* at 2-5.

<sup>171</sup> *Id.* at 5.

<sup>172</sup> *Id.* at 2.

<sup>173</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16165, para. 20; 47 C.F.R. § 64.2101(c).

<sup>174</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16169, para 27.

<sup>175</sup> *Id.* at para 27 & n.84. Under section 3 of the Act, an affiliate is "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person." And, for purposes of this definition, the term "own" means to "own an equity interest (or the equivalent thereof) of more than 10 percent." 47 U.S.C. § 153(2).



ability to monitor rural call completion problems effectively” in creating the exemption because we could continue to capture “as much as 95% of all callers.”<sup>176</sup> But the record here does not reveal how many providers or how much call completion data would be lost if we modified the rule as Carolina West proposes. In addition, while Carolina West argues that minority investors cannot dictate call routing for the carriers in which they invest,<sup>177</sup> this argument fails to take into account, for example, the variety of stock classes and attendant voting rights that may allow a minority investor to in fact to dictate call routing for an affiliate because the affiliate may be relying on the minority investor to handle its long distance traffic. Thus, a categorical decision to consider the lines of only affiliates under common control could create a loophole exempting carriers under common influence in their routing decisions, making it more difficult for the Commission to identify the sources of problems in rural call completion. Therefore, the record does not persuade us to modify our rules as Carolina West requests, and we deny their petition.

60. We do, however, recognize that there are burdens associated with compliance with these rules, and there may be particular circumstances that make application of the rules to Carolina West inequitable or contrary to the public interest. We invite Carolina West and other carriers to file waiver requests if they believe that the public interest would be better served by not counting the lines of some or all of their affiliates towards the 100,000 line threshold.<sup>178</sup>

#### IV. PROCEDURAL MATTERS

##### A. Paperwork Reduction Act

61. This document contains modified information collection requirements subject to the PRA, Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

62. In this present document, we have assessed the effects of various requirements adopted in the *Rural Call Completion Order* and determined that certain recordkeeping, retention, and reporting requirements should not apply to intraLATA toll calls that are carried entirely over the covered provider’s network or that are handed off by the covered provider directly to the terminating LEC or its terminating tandem switch. We find that these actions are in the public interest because they reduce the burdens of these recordkeeping, retention, and reporting requirements without undermining the goals and objectives behind the requirements. The amendments we adopt today will reduce the burden on businesses with fewer than 25 employees.

##### B. Supplemental Final Regulatory Flexibility Analysis

63. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>179</sup> the Commission has prepared a Supplemental Final Regulatory Flexibility Analysis (FRFA) relating to this Order on

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<sup>176</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16169, para. 27.

<sup>177</sup> Carolina West Petition at 4.

<sup>178</sup> *See* 47 C.F.R. § 1.3 (stating that the Commission may waive its rules, in whole or in part, for good cause shown). We note that Carolina West posited a hypothetical regarding a carrier that makes the initial call routing decision for no lines having to comply with the rules because its affiliates have sufficient lines; any such carriers that exist are free to seek a waiver. *See* Carolina West Petition at 4.

<sup>179</sup> *See* 5 U.S.C. § 604. 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, Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996.

Reconsideration. The Supplemental FRFA is set forth in Appendix B.

**C. Congressional Review Act**

64. The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>180</sup>

**V. ORDERING CLAUSES**

65. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 405, and sections 1.1 and 1.429 of the Commission's rules, 47 C.F.R. §§ 1.1, 1.429, that this Order on Reconsideration IS ADOPTED, effective thirty (30) days after publication in the Federal Register.

66. IT IS FURTHER ORDERED that Part 64 of the Commission's rules, 47 C.F.R. Part 64, IS AMENDED as set forth in Appendix A, and that such rule amendments SHALL BE EFFECTIVE after announcement in the Federal Register of Office of Management and Budget (OMB) approval of the rules, and on the effective date announced therein.

67. IT IS FURTHER ORDERED that the Petition of USTelecom and ITTA for Reconsideration or, in the Alternative, for Waiver or Extension of Time to Comply IS GRANTED to the extent described herein and otherwise DISMISSED AS MOOT.

68. IT IS FURTHER ORDERED that the Petitions for Reconsideration filed by Carolina West and COMPTEL ARE DENIED.

69. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Sprint Corporation IS DENIED, as to Sections I and II.A of the Petition. The Petition for Reconsideration filed by Sprint Corporation is DISMISSED and DENIED on an independent and alternative basis, as to Section II.B of the Petition.

70. IT IS FURTHER ORDERED that the Petition for Reconsideration filed by Transcom Enhanced Services, Inc. is DISMISSED.

71. IT IS FURTHER ORDERED that the Petition for Waiver filed by AT&T Services, Inc., IS DISMISSED AS MOOT, as to the portion of the Petition requesting relief for on-net intraLATA toll traffic.

72. IT IS FURTHER ORDERED that the Petition for Waiver filed by CenturyLink, Inc. IS DISMISSED AS MOOT, as to Section III.C.ii of the Petition.

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

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

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<sup>180</sup> *See* 5 U.S.C. § 801(a)(1)(A).

## APPENDIX A

## Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 to read as follows:

**PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS**

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, and 620 unless otherwise noted.

2. Amend § 64.2101 by revising paragraph (f) to read as follows:

**§ 64.2101 Definitions**

\* \* \* \* \*

*Long-distance voice service.* For purposes of subparts V and W, the term “long-distance voice service” includes interstate interLATA, intrastate interLATA, interstate interexchange, intrastate interexchange, intraLATA toll, inter-MTA interstate and inter-MTA intrastate voice services.

\* \* \* \* \*

3. Amend § 64.2103 by redesignating paragraph (e) as paragraph (f) and adding new paragraph (e) as follows.

**§ 64.2103 Retention of Call Attempt Records**

\* \* \* \* \*

(e) IntraLATA toll calls carried entirely over the covered provider’s network or handed off by the covered provider directly to the terminating local exchange carrier or directly to the tandem switch serving the terminating local exchange carrier’s end office (terminating tandem), are excluded from these requirements.

(f) The information contained in each record shall include:

- (1) the calling party number;
- (2) the called party number;
- (3) the date;
- (4) the time;
- (5) an indication whether the call attempt was handed off to an intermediate provider or not and, if so, which intermediate provider;
- (6) the rural OCN associated with the called party number;
- (7) an indication whether the call attempt was interstate or intrastate;

(8) an indication whether the call attempt was answered, which may take the form of an SS7 signaling cause code or SIP signaling message code associated with each call attempt; and

(9) an indication whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number. This indication may take the form of an SS7 signaling cause code or SIP signaling message code associated with each call attempt.

4. Amend § 64.2105 by adding paragraph (e) as follows:

\* \* \* \* \*

(e) IntraLATA toll calls carried entirely over the covered provider's network or handed off by the covered provider directly to the terminating local exchange carrier or directly to the tandem switch that the terminating local exchange carrier's end office subtends (terminating tandem), are excluded from these requirements.

\* \* \* \* \*

## APPENDIX B

## Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),<sup>1</sup> an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (Notice) in WC Docket No. 13-39.<sup>2</sup> The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA.<sup>3</sup> The Commission subsequently incorporated a Final Regulatory Flexibility Analysis (FRFA), as well as a supplemental IRFA, in the Report and Order and Further Notice of Proposed Rulemaking in WC Docket No. 13-39.<sup>4</sup> This Supplemental FRFA conforms to the RFA and incorporates by reference the FRFA in the Order. It reflects changes to the Commission's rules arising from the Order on Reconsideration.

**A. Need for, and Objectives of, the Order on Reconsideration**

2. This Order on Reconsideration affirms the Commission's commitment to ensuring that high quality telephone service must be available to *all* Americans. In the underlying Order, the Commission established rules to combat extensive problems with successfully completing calls to rural areas, and created a framework to improve the ability to monitor call problems and take appropriate enforcement action. In this Order on Reconsideration, the Commission denies several petitions for reconsideration that, if granted, would impair the Commission's ability to monitor, and take enforcement action against, call completion problems. The Commission does, however, grant one petition for reconsideration because the Commission finds that modifying its original determination will significantly lower providers' compliance costs and burdens without impairing the Commission's ability to obtain reliable and extensive information about rural call completion problems.

3. Specifically, in the Order on Reconsideration, the Commission grants the petition for reconsideration of the *Rural Call Completion Order* filed by USTelecom and ITTA. In doing so, the Commission modifies rules adopted in the *Rural Call Completion Order* so that the recordkeeping, retention, and reporting requirements adopted in the *Rural Call Completion Order* do not apply to a limited subset of calls: intraLATA toll calls that are carried entirely over the covered provider's network, and intraLATA toll calls that are handed off by the covered provider directly to the terminating local exchange carrier (LEC) or to the tandem that the terminating LEC's end office subtends. The decision to grant reconsideration reflects a focused analysis of the costs of applying the rules to this limited set of traffic, the fact that this traffic represents a small portion of total toll traffic, and the modest incremental benefit that such data would likely yield. Most notably, these limited rule modifications will reduce the burdens on small business entities resulting from compliance with the rules adopted in WC Docket No. 13-39.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and the Rural Call Completion Order**

4. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA that was incorporated in the Notice.

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<sup>1</sup> See 5 U.S.C. § 603. The RFA, *see* 5 U.S.C. § 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>2</sup> Notice, 28 FCC Rcd at 1590-1600, Appx. B.

<sup>3</sup> *Id.* at 1583, para. 45.

<sup>4</sup> See *Rural Call Completion Order*, 28 FCC Rcd at 16219-29, Appx. D (FRFA); *id.* at 16230-39 (IRFA for Further Notice).

5. In a petition for reconsideration of the *Rural Call Completion Order*, COMPTTEL argued that the Commission's decision to adopt in the *Rural Call Completion Order* a smaller covered provider exception to the reporting rules, based on 100,000 subscriber lines rather than 100,000 subscribers, failed to comply with section 604 of the RFA. In the Order on Reconsideration, the Commission denies COMPTTEL's petition. The Commission finds that the FRFA incorporated in the *Rural Call Completion Order* complies with the RFA.<sup>5</sup> Specifically, the Commission recounts how section E of the FRFA specifically addresses steps taken to minimize the significant economic impact on small entities, and references the smaller covered provider exception as one factor that reduces the economic impact of the rules on small entities,<sup>6</sup> and that in the *Rural Call Completion Order*, the Commission provided an explanation for the smaller covered provider exception adopted therein.<sup>7</sup>

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

6. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

7. 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, if adopted.<sup>8</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>9</sup> In addition, the term "small business" has the same meaning as the term "small-business concern" under the Small Business Act.<sup>10</sup> 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.<sup>11</sup>

8. As noted, a FRFA was incorporated into the *Rural Call Completion Order*. In that analysis, the Commission described in detail the various small business entities that may be affected by the final rules. Those entities consist of: wired telecommunications carriers; LECs; incumbent LECs; competitive LECs, competitive access providers, shared-tenant service providers, and other local service providers; interexchange carriers; prepaid calling card providers; local resellers; toll resellers; other toll carriers; wireless telecommunications carriers (except satellite); cable and other program distribution; cable companies and systems; and all other telecommunications.<sup>12</sup> In this present Order on Reconsideration, the Commission is amending the final rules adopted in the *Rural Call Completion Order* and the small

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<sup>5</sup> *Order on Reconsideration* at paras. 31-34; see *Rural Call Completion Order*, 28 FCC Rcd at 16219-29, Appx. D.

<sup>6</sup> *Order on Reconsideration* at para. 32 (citing *Rural Call Completion Order*, 28 FCC Rcd at 16227, Appx. D., para. 7).

<sup>7</sup> *Order on Reconsideration* at para. 33 (citing *Rural Call Completion Order*, 28 FCC Rcd at 16168-69, para. 27).

<sup>8</sup> See 5 U.S.C. § 603(b)(3).

<sup>9</sup> See 5 U.S.C. § 601(6).

<sup>10</sup> See 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."

<sup>11</sup> See 15 U.S.C. § 632.

<sup>12</sup> *Rural Call Completion Order*, 28 FCC Rcd at 16221-26, Appx. D, Sect. C.

business entities described in the underlying FRFA are the same that may be affected by this present Order on Reconsideration. This Supplemental FRFA incorporates by reference the description and estimate of the number of small entities from the FRFA in this proceeding.

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

9. In Section D of the FRFA incorporated into the *Rural Call Completion Order*, the Commission described in detail the projected recording, recordkeeping, reporting and other compliance requirements for small entities arising from the rules adopted in the *Rural Call Completion Order*.<sup>13</sup> This Supplemental FRFA incorporates by reference the requirements described in Section D of the FRFA. In this Order on Reconsideration, however, the Commission modifies rules adopted in the *Rural Call Completion Order* so that the recordkeeping, retention, and reporting requirements adopted in the *Rural Call Completion Order* do not apply to a limited subset of calls: intraLATA toll calls that are carried entirely over the covered provider's network, and intraLATA toll calls that are handed off by the covered provider directly to the terminating LEC or to the tandem that the terminating LEC's end office subtends. The effect of such modifications is to reduce the compliance requirements for this subset of small entities that carry intraLATA toll traffic

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

10. 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."<sup>14</sup> In Section E of the FRFA incorporated into the *Rural Call Completion Order*, the Commission described in detail the steps taken to minimize the significant economic impact on small entities, and the significant alternatives considered in the *Rural Call Completion Order*.<sup>15</sup> This Supplemental FRFA incorporates by reference the steps taken and alternatives described in Section E of the FRFA.

11. The Commission considered the economic impact on small entities in reaching its final conclusions and taking action in the *Rural Call Completion Order*, and it likewise does so here. While declining to disturb the majority of the findings and conclusions in the underlying *Rural Call Completion Order*, this Order mitigates burdens for smaller entities that carry intraLATA toll traffic. By excluding intraLATA toll calls that are carried entirely over the covered provider's network, and intraLATA toll calls that are handed off by the covered provider directly to the terminating LEC or to the tandem that the terminating LEC's end office subtends, the Commission reduces burden of the recordkeeping, retention, and reporting requirements it adopted in the *Rural Call Completion Order*.

**G. Report to Congress**

12. The Commission will send a copy of the Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>16</sup> In addition, the Commission will send a copy of the Order on Reconsideration, including this Supplemental

<sup>13</sup> See *id.* at 16226-27, Appx. D, Sect. D.

<sup>14</sup> 5 U.S.C. § 603(c)(1)-(c)(4).

<sup>15</sup> See *Rural Call Completion Order*, 28 FCC Rcd at 16227-29, Appx. D, Sect. E.

<sup>16</sup> See 5 U.S.C. § 801(a)(1)(A).

FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.<sup>17</sup>

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<sup>17</sup> See 5 U.S.C. § 604(b).



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**STATEMENT OF  
CHAIRMAN TOM WHEELER**

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

The problem of poor quality call completion in rural America is very real, and the consequences can be dire, impacting businesses, families, and public safety. The Commission has taken numerous steps to address this serious problem, including enforcement actions against companies with a poor record of call completion in rural America. We also adopted rules on data collection that allow both the Commission and service providers to pinpoint areas where call completion rates are unacceptably low. The Order on Reconsideration we adopt today paves the way for these data collection requirements of the Commission's rural call completion rules to become fully effective by resolving several outstanding petitions for reconsideration regarding the scope of the data collection requirements. This resolution will provide certainty to the companies subject to our rules, while ensuring that both the Commission and service providers have sufficient information to combat poor call completion rates.

Now that this Order has been adopted, we will act promptly to obtain the necessary approvals from OMB to move forward with our data collection. To that end, I have directed Commission staff to send the required paperwork to OMB within the next three business days, and to work with OMB to ensure that the approval process is completed as quickly as possible. The information we collect will assist long distance providers and the Commission in monitoring rural call performance, and will facilitate our ability to enforce our rules on an ongoing basis.

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN**

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

It is astonishing that in 2014 an alarming number of calls to rural America are not being completed. This is unacceptable. The core of the FCC's mission is to guarantee that networks are reliable and resilient so that every consumer can make and receive a telephone call. We have an obligation to take decisive and meaningful action to ensure that all calls – whether rural, remote, urban or suburban – are completed.

The FCC should always strive to minimize burdens while making sure that we have the tools necessary to protect the public interest. The Order adopted last year took a balanced approach to enable us to investigate and crack down on call completion problems by requiring providers to retain and report information about long distance calls on their networks. New information in the record demonstrates that a narrow reconsideration is appropriate in order to reduce the burdens on providers, but we still have more work to do. Analyzing data will help isolate and investigate the issue, but it will not completely solve the problem. It is my hope that by working with my colleagues, we will be able to take permanent action to address rural call completion issues as expeditiously as possible.

**STATEMENT OF  
COMMISSONER JESSICA ROSENWORCEL**

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

For too long, consumers in rural America—and the carriers that serve them—have complained about dropped calls, missed calls, and connections that fail. This is unacceptable. After all, failure to complete calls to rural subscribers can cut families off from relatives in rural areas, lead rural businesses to lose customers, and create dangerous delays for first responder communications.

A year ago, we took steps to fix rural call completion. Specifically, we put in place new recordkeeping, retention, and reporting requirements. These rules were intended to help ensure that rural consumers receive service on par with their urban counterparts. However, these rules are not yet in effect. So I'm pleased that this Order on Reconsideration resolves several pending petitions for reconsideration that will allow us to move forward with putting these rules into effect. Going forward, I hope we can move faster to bring an end to this persistent problem.

**STATEMENT OF  
COMMISSIONER AJIT PAI**

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

When you dial a phone number, you expect your call to go through. And yet, when many try to call a family member or a business in rural America, they hear an endless series of rings, dead air, or a busy signal even when someone is ready to answer on the other side. No one deserves such a broken system. It's not fair to those who live or have loved ones in small towns and villages. And as Senators Michael B. Enzi, John Thune, Pat Roberts, James M. Inhofe, Jerry Moran, John Boozman, John Barrasso, John Hoeven, Orrin G. Hatch, and Deb Fischer reminded us just a few weeks ago, "[r]ural businesses are particularly impacted when calls are not completed because they risk losing valuable business."

Last year we took the first step to fixing the problem by deciding what information we needed to collect to diagnose the problem. Today's resolution of the five pending petitions for reconsideration is step number two. The Office of Management and Budget will then need to sign off, carriers will need to report the data, and our hardworking staff in the Wireline Competition Bureau will need to analyze it. At that point, at long last, we should have the information we need in order to fix the problem—and it can't come soon enough.

**CONCURRING STATEMENT OF  
COMMISSIONER MICHAEL O'RIELLY**

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

Americans expect their calls to be completed no matter where they live. So the FCC has worked hard to better understand and reduce rural call completion problems. These efforts have ranged from Declaratory Rulings and enforcement actions to the latest endeavor, contained in the 2013 Report and Order and Further Notice of Proposed Rulemaking, to collect more data and seek further comment. I commend and support these efforts.

I must concur with today's Order on Reconsideration, however. While the FCC should root out call completion problems, it should not take procedural and legal shortcuts along the way that undermine the agency's credibility across proceedings. Unfortunately, I can point to several examples in this Order.

For instance, the Order brushes aside Sprint's concern that the Commission did not make certain surveys available for independent review. The Order notes that the surveys were only one piece of information that the Commission relied on when adopting its rules. While the Commission may have the right to reject the Sprint petition, the better practice would have been to make such information available, by protective order if necessary, to protect any information that was truly confidential. When our decision-making isn't transparent, our decisions become suspect.

The Order also dismisses COMPTEL's and ignores Carolina West's concerns about whether the Commission provided sufficient notice for the adopted rules. The Carolina West petition notes that the Commission failed to explain why it changed the proposed definition of "covered providers" to include affiliates. Indeed, the word affiliate does not even appear in the underlying Notice. I expect the Commission to seek targeted comment during a proceeding to shore up any possible notice deficiencies instead of having to rely on "logical outgrowth" or other procedural defenses after the fact. I tend to find the argument presented by Carolina West persuasive and carriers now captured by our rules should not be forced to pray that a waiver is granted, as is suggested. I suspect that we could exclude such carriers without undermining our rural call completion efforts.

Moreover, I continue to object to the cursory cost-benefit analyses contained in Commission orders. It may be the case that the benefits of these rules outweigh the costs, but it is hard to tell from the few paragraphs cited in the underlying item. To be sure, those paragraphs discussed important steps the Commission was taking to shrink the scope of the rules. But they make no attempt to quantify the costs of the rules or to quantify and compare the benefits. By a series of Executive Orders, agencies, including independent agencies like the FCC, are supposed to "propose or adopt a regulation only upon a reasoned determination that its benefits justify its cost" and must "use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." This is not being done at the Commission.

I also disagree that the Commission should rely on the Paperwork Reduction Act process—i.e., something that occurs after I have been asked to vote—to sort out the costs and benefits. I need to make decisions based on actual (not "to be determined") estimates of costs and benefits. Conducting the analysis after the fact also risks needless delay because the FCC may have to change its rules to address Office of Management and Budget concerns that the FCC has placed undue burdens on providers.

Finally, while not directly addressed in today's Order, I am concerned by the trend of invoking ancillary authority to extend common carrier style regulation to an increasing array of providers and services. The Transcom petition, while dismissed on procedural grounds, raises a host of issues that need to be considered fully. Ancillary authority should be exercised with extreme caution (if at all) because it

arises, by definition, only in cases where Congress did not provide the FCC with express authority to regulate. It should not be used to force other providers to abide by “industry practices”.

While I can only concur with this particular Order, I fully support the underlying goal of ensuring that all consumers have access to high-quality telephone service, and I hope we can continue to make progress to that end.