

■ 4. Section 155.410 is amended by revising paragraph (c)(1) to read as follows:

**§ 155.410 Initial and annual open enrollment periods.**

\* \* \* \* \*

(c) \* \* \*

(1) *Regular effective dates.* For a QHP selection received by the Exchange from a qualified individual—

(i) On or before December 23, 2013, the Exchange must ensure a coverage effective date of January 1, 2014.

(ii) Between the first and fifteenth day of any subsequent month during the initial open enrollment period, the Exchange must ensure a coverage effective date of the first day of the following month.

(iii) Between the sixteenth and last day of the month for any month between January 2014 and March 31, 2014 or between the twenty-fourth and the thirty-first of the month of December 2013, the Exchange must ensure a coverage effective date of the first day of the second following month.

(iv) Notwithstanding the requirement of paragraph (c)(1)(i) of this section, an Exchange or SHOP operated by a State may require a January 1, 2014 effective date for plan selection dates later than December 23, 2013; a SHOP may also establish plan selection dates as early as December 15, 2013 for enrollment in SHOP QHPs for a January 1, 2014 coverage effective date.

(v) Notwithstanding the regular effective dates set forth in this section, an Exchange may allow issuers to provide for a coverage effective date of January 1, 2014 for plan selections received after December 23, 2013 and on or before January 31, 2014, if a QHP issuer is willing to accept such enrollments.

\* \* \* \* \*

**PART 156—HEALTH INSURANCE ISSUER STANDARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES**

■ 5. The authority citation for part 156 continues to read as follows:

**Authority:** Title I of the Affordable Care Act, Sections 1301–1304, 1311–1312, 1321, 1322, 1324, 1334, 1341–1343, and 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18042).

■ 6. Section 156.265 is amended by revising paragraph (d) to read as follows:

**§ 156.265 Enrollment process for qualified individuals.**

\* \* \* \* \*

(d) *Premium payment.* Regarding premium payment, a QHP issuer—

(1) Must, follow the premium payment process established by the Exchange in accordance with § 155.240.

(2) Must, for QHPs offered through a Federally-facilitated Exchange, establish the date by which a qualified individual that has selected a QHP within the enrollment period dates in § 155.410(b) of this subchapter must make a premium payment in order to effectuate coverage by the applicable coverage effective date, provided that:

(i) The payment date is no earlier than the day before the coverage effective date.

(ii) The payment date policy is applied consistently to all applicants in a non-discriminatory manner.

\* \* \* \* \*

Dated: December 4, 2013.

**Marilyn Tavenner,**  
*Administrator, Centers for Medicare & Medicaid Services.*

Approved: December 5, 2013.

**Kathleen Sebelius,**  
*Secretary, Department of Health and Human Services.*

[FR Doc. 2013–29918 Filed 12–12–13; 4:15 pm]

**BILLING CODE 4120–01–P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 64**

[WC Docket No. 13–39; FCC 13–135]

**Rural Call Completion**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Federal Communications Commission (Commission) improves its ability to monitor problems with completing calls to rural areas, and enforce restrictions against blocking, choking, reducing, or restricting calls. The Report and Order applies the new 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, counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers’ affiliates (referred to herein as “covered providers”). In most cases, this is the calling party’s long-distance provider. Covered providers include LECs, interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, and VoIP service providers. These rules do not apply to

intermediate providers. Covered providers must file quarterly reports and retain the call detail records for at least six calendar months. The Report and Order also allows qualifying providers to certify that they meet the conditions for a Safe Harbor that would reduce reporting and retention obligations. In addition, the Commission has delegated to the Wireline Competition Bureau, in consultation with the Enforcement Bureau, the authority to act on requests from qualified providers for waiver of these rules. The Report and Order also adopts a rule prohibiting all originating and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted.

**DATES:** Effective January 16, 2014 except for § 64.2201 of the Commission’s rules, which will become effective January 31, 2014, and §§ 64.2103, 64.2105, and 64.2107 and the information collection in paragraph 67 of this Report and Order, which contains information collection requirements that have not been approved by Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of §§ 64.2103, 64.2105, and 64.2107.

**FOR FURTHER INFORMATION CONTACT:** Gregory D. Kwan, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1191.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Report and Order in WC Docket No. 13–39, FCC 13–135, released on November 8, 2013. The complete text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. It is also available on the Commission’s Web site at <http://www.fcc.gov>. This summarizes only the Report and Order in WC Docket No. 13–39; A summary of the Commission’s Further Notice of Proposed Rulemaking in WC Docket No. 13–39 is published elsewhere in this issue of the **Federal Register**.

**Synopsis of Report and Order**

**I. Introduction**

1. In this Order, we adopt rules to address significant concerns about completion of long-distance calls to rural areas. Doing so will help ensure that long-distance calls to all Americans, including rural Americans, are completed. The record in this proceeding leaves no doubt that completion rates for long-distance calls

to rural areas are frequently poor—whether the call is significantly delayed, the called party's phone never rings, the caller hears false busy signals, or there are other problems. These failures have significant and immediate public interest ramifications, causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and creating potential for dangerous delays in public safety communications in rural areas.

2. The rules that we adopt today are a critical step to eliminating this significant problem by improving the Commission's ability to monitor the delivery of long-distance calls to rural areas, aiding enforcement action in connection with providers' call completion practices as necessary, as well as aiding consumers and industry by adopting a rule prohibiting false ring signaling. In the Further Notice of Proposed Rulemaking (FNPRM), we seek comment on additional measures that may help the Commission ensure a reasonable and nondiscriminatory level of service to rural areas.

## II. Background

3. The Commission initiated this rulemaking in February 2013 to help address problems in the completion of long-distance telephone calls to rural customers. This followed a series of Commission actions to address rural call completion concerns over the past several years. As discussed in greater detail below, since 2007 the Commission has:

- Adopted the *USF/ICC Transformation Order*, which, among other things, reaffirmed the prohibition on call blocking; made clear that carriers' blocking of VoIP–PSTN traffic is prohibited; clarified that interconnected and one-way VoIP providers are prohibited from blocking voice traffic to or from the PSTN; and adjusted over a period of time many terminating switched access charges as part of transition to a bill-and-keep regime;
- Issued two Declaratory Rulings clarifying that carriers are prohibited from blocking, choking, reducing, or restricting traffic in any way, including to avoid termination charges, and clarifying the scope of the Commission's prohibition on blocking, choking, reducing, or restricting telephone traffic which may violate section 201 or 202 of the Communications Act of 1934, as amended (the Act);
- Established a Rural Call Completion Task Force to investigate the growing problems associated with calls to rural customers;

- Held a workshop to identify specific causes of rural call completion problems and discuss potential solutions with key stakeholders;

- Established dedicated avenues for rural consumers and carriers to inform the Commission about call completion problems; and

- Investigated and pursued enforcement of providers not complying with the statute and/or our rules, including a consent decree as well as an enforcement advisory regarding rural call completion problems.

We describe in greater detail the Commission's most significant actions, which inform the legal and policy actions that we take in this Order.

4. *USF/ICC Transformation Order*. On November 18, 2011, the Commission released the *USF/ICC Transformation Order*, which, among other things, established a number of new rules requiring carriers to adjust, over a period of years, many of their terminating switched access charges effective every July 1, as part of a transition to a bill-and-keep regime. The Commission capped the vast majority of interstate and intrastate switched access rates as of December 29, 2011. Price cap and rate-of-return carriers were required to make comparable reductions to certain intrastate switched access rates in 2012 and 2013 if specified criteria were met. Beginning in 2014, price cap and rate-of-return carriers begin a series of rate reductions to transition certain terminating interstate and intrastate switched access rates to bill-and-keep. The price cap transition occurs over six years and the rate-of-return transition over nine years.

5. The *USF/ICC Transformation Order* also re-emphasized the Commission's longstanding prohibition on call blocking. The Commission reiterated that call blocking has the potential to degrade the reliability of the nation's communications network and that call blocking harms consumers. The Commission also made clear that the general prohibition on call blocking by carriers applies to VoIP-to-PSTN traffic. Finally, the Commission prohibited call blocking by providers of interconnected VoIP services as well as providers of "one-way" VoIP services. The Communications Act defines "non-interconnected VoIP service" as a service that enables real-time voice communications that originate from or terminate to the user's location using Internet protocol or any successor protocol, requires Internet protocol compatible customer premises equipment, and does not include any service that is an interconnected VoIP

service. 47 U.S.C. 153(36). Our use of the term "one-way VoIP" in this Order is consistent with the definition of "non-interconnected VoIP service" in the Communications Act, to the extent such service offers the capability to place calls to or receive calls from the PSTN.

6. In addition, the Commission adopted rules to address so-called "phantom traffic," that is, traffic that terminating networks receive that lacks certain identifying information for calls. The lack of such basic information to accompany calls has also resulted in calls being delivered without the correct caller identification, which is a common call quality complaint in rural areas. In the *USF/ICC Transformation Order*, the Commission found that service providers in the call path were intentionally removing or altering identifying information to avoid paying the terminating rates that would apply if the call were accurately signaled and billed. The Commission adopted rules requiring telecommunications carriers and providers of interconnected VoIP service to include the calling party's telephone number in all call signaling, and required intermediate providers to pass this signaling information, unaltered, to the next provider in a call path.

7. *2012 Declaratory Ruling*. In 2012, the Wireline Competition Bureau issued a declaratory ruling to clarify the scope of the Commission's prohibition on blocking, choking, reducing, or restricting telephone traffic in response to continued complaints about rural call completion issues from rural associations, state utility commissions, and consumers. The *2012 Declaratory Ruling* made clear that practices used for routing calls to rural areas that lead to call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201 of the Act or may violate the carriers' section 202 duty to refrain from unjust or unreasonable discrimination in practices, facilities, or services. The *2012 Declaratory Ruling* also noted that carriers may be subject to liability under section 217 of the Act for the actions of their agents or other persons acting for or employed by the carriers. The Bureau stated that the practices causing rural call completion problems "adversely affect the ubiquity and reliability of the nation's communications network and threaten commerce, public safety, and the ability of consumers, businesses, and public health and safety officials in rural America to access and use a reliable network."

8. *The NPRM*. In February 2013, the Commission adopted a Notice of

Proposed Rulemaking (*NPRM*) seeking comment on proposed reporting and data retention requirements. 78 FR 21891, April 12, 2013. The *NPRM* proposed rules requiring facilities-based originating long-distance voice service providers to collect, retain, and report to the Commission data on call answer rates. The *NPRM* also proposed rules requiring facilities-based originating long-distance voice service providers to collect and retain information on call attempts and to periodically analyze call completion data and report the results to the Commission. The *NPRM* proposed rules requiring facilities-based originating long-distance providers with more than 100,000 retail long-distance subscribers (business or residential) to file quarterly reports that measure the call answer rate for each rural operating company number (OCN) to which 100 or more calls were attempted during a calendar month, and to report on specific categories of call attempts. The *NPRM* also proposed requiring originating long-distance providers to measure the overall call answer rate for nonrural call attempts to permit comparisons between long-distance calls in rural versus nonrural local exchanges.

9. *Public Notice Seeking Comment on List of Rural OCNs*. On April 18, 2013, the Wireline Competition Bureau released a Public Notice seeking comment on which rural OCNs covered providers should include in the proposed quarterly reports on call completion performance. 78 FR 26572–01, May 7, 2013. The Public Notice invited comment on the completeness and suitability of a list of rural OCNs compiled by the National Exchange Carrier Association (NECA) and posted on NECA's Web site.

10. *Enforcement Activity*. The Commission's Enforcement Bureau is also actively responding to rural call completion problems. In March 2013, Level 3 Communications, LLC (Level 3) entered into a consent decree terminating the Enforcement Bureau's investigations into possible violations of sections 201(b) and 202(a) of the Act with respect to Level 3's call completion practices to rural areas, including its use and monitoring of intermediate providers. On July 19, 2013, the Enforcement Bureau issued an advisory to long-distance providers to take consumer complaints about rural call completion seriously. The advisory gave examples of plainly insufficient provider responses and warned that “[g]oing forward, the FCC may take enforcement action against providers that submit such patently deficient responses to informal complaints.”

11. In addition to conducting ongoing investigations of several long-distance providers, the Commission has been addressing daily operational problems reported by rural customers and carriers so that incoming long-distance calling to customers of rural incumbent local exchange carriers (LECs) is promptly restored. We have established dedicated avenues for rural customers and carriers to inform the Commission about these call completion problems. A web-based complaint intake focuses on the rural call completion problems of residential and business customers, instructs such customers how to file complaints with the Commission, and links to the Commission's standard 2000B complaint form. Separately, a dedicated email intake provides a “hot email line” for rural telephone companies to alert the Commission of systemic problems receiving calls from a particular originating long-distance provider and facilitates provider-to-provider resolution.

12. Many key stakeholders acknowledge that call termination issues to rural service areas are serious and widespread and have collaborated to propose industry solutions. For example, in October 2011, stakeholders attended the Commission's Rural Call Completion Task Force's workshop to identify and discuss potential solutions. In 2012, the Alliance for Telecommunications Industry Solutions (ATIS) released the *Intercarrier Call Completion/Call Termination Handbook* outlining standards and practices of the industry relevant to ensuring call completion. In August 2013, ATIS and NECA announced a voluntary Joint National Call Testing Project offering providers the opportunity to test call completion issues identified on calls destined to many areas served by rural local exchange carriers. The testing project will facilitate cooperative trouble resolution efforts with originating, intermediate and terminating carriers. Finally, we note that some providers have devoted substantial time and resources to analyzing rural call completion performance. We applaud these and other efforts by stakeholders and encourage the continued support of the industry to undertake further efforts to diagnose problems in call routing, cooperate on finding solutions, and adopt best practices aimed at solving the rural call completion problem.

### III. Discussion

13. Even with the significant Commission actions described above, the record leaves no doubt that the problems of completing calls to rural

areas, particularly areas served by rural incumbent local exchange carriers (ILECs) continue to be frequent and pervasive throughout rural America. The inability to complete calls reliably threatens public safety and contravenes the public interest. We conclude that additional Commission action and enforcement are necessary to address these problems.

14. *Scope of the problems*. The record indicates that rural call completion problems are serious and widespread. NTCA has argued that “the call completion epidemic results in ‘dire consequences’ to consumers, economic development, and public safety across the nation.” The problems manifest themselves in lengthy periods of dead air on the calling party's end after dialing a number, audible ringing tones on the calling party's end when the called party's telephone never rings at all, false busy signals, inaccurate intercept messages, and the inability of one or both parties to hear the other when the call does go through. The record contains substantial evidence that these problems persist; some state that they are worsening. We also continue to receive information on the nature and extent of the rural call completion problem. For example, we have received examples of life-threatening call failures, including a situation where an on-call surgeon was unable to receive a call from a hospital for emergency surgery and a 911 call center was unable to do emergency call backs. We also continue to take in individual complaints from consumers and rural telephone companies affected by these issues.

15. Although some commenters question whether the problems are serious or widespread and whether there is a need for Commission action, these comments are largely unsubstantiated and are inconsistent with the significant evidence and real-world Commission experience to the contrary. We find the views of rural carriers and our state partners more persuasive, given their direct experience with complaints about call completion performance. We therefore find a sufficient basis for proceeding with the rules we adopt today, and can revisit these rules in the future as warranted by the data we will be collecting, which should provide evidence regarding the scope and extent of call completion problems over time.

16. *Causes of the Problems*. There appear to be multiple factors that cause rural call completion problems. Rural associations posit that the call completion problems may arise from the manner in which originating providers

set up the signaling and routing of their calls, and that many of these call routing and termination problems can be attributed to intermediate providers. They argue that least cost routing carriers offer terminating services at low rates, and that some least cost routing carriers may provide inferior service for a low rate.

17. 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. Given the particularly high rates long-distance providers incur to terminate long-distance calls to rural rate-of-return carriers, long-distance providers have additional incentives to reduce the per-minute cost of calls. For example, the disparity between interstate rates can be 5–6 cents per minute for rate-of-return areas and just over half a cent per minute for price cap areas. As a result, there is greater incentive for the long-distance provider to hand off the call to an intermediate provider that is offering to deliver it cheaply—and potentially less incentive to ensure that calls to rural areas are actually completed properly. The prevalence of these problems accords with providers' incentives to engage in blocking or degrading traffic, or similar behavior, in an effort to minimize their intercarrier compensation payments, which has been long recognized by the Commission. While the Commission's comprehensive reform of intercarrier compensation will alleviate some of these price differences in the long-term, it likely will continue to be more costly to complete calls to rate-of-return carriers while the transition to bill-and-keep is implemented over the next several years.

18. The Commission has determined that call blocking is an unjust and unreasonable practice under section 201(b) of the Act, and the Wireline Competition Bureau has made clear that carriers' rural call routing practices that lead to call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201(b) of the Act. In the *USF/ICC Transformation Order*, the Commission extended its longstanding prohibition on call blocking to providers of interconnected and one-way VoIP service. We emphasize that interconnected and one-way VoIP service providers may violate this prohibition if they block, choke, reduce, or restrict traffic on calls placed to customers of rural telephone companies.

#### A. Recording, Retention, and Reporting of Data

##### 1. Scope

19. *Summary.* We adopt recording, retention, and reporting requirements to substantially increase our ability to monitor and redress problems associated with completing calls to rural areas. These rules will also enhance our ability to enforce restrictions against blocking, choking, reducing, or restricting calls. For the reasons set forth below, we find that the recording, retention, and reporting rules should 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 (referred to herein as "covered providers"). In most cases, this is the calling party's long-distance provider. As discussed below, covered providers include LECs, interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, and VoIP service providers. The recording, retention, and reporting rules we adopt today apply to providers of interconnected VoIP service, as that term is defined in section 9.3 of the Commission's rules, 47 CFR 9.3, and to providers of VoIP service that permits users generally to terminate calls to the PSTN, but not to receive calls from the PSTN (one-way VoIP). For ease of reference, in this Order, the terms "VoIP service" or "VoIP services" are sometimes used to refer collectively to interconnected VoIP service and one-way VoIP service. Finally, we do not apply these rules to intermediate providers.

20. *Covered Providers.* The *NPRM* proposed to require facilities-based, originating long-distance voice service providers to comply with recording, retention, and reporting obligations. The *NPRM* proposed that if the originating long-distance voice service provider were not facilities-based, the first facilities-based provider in the call-delivery path would be subject to the rules. The Commission's proposal to limit application of the rules to facilities-based providers was premised on the belief that those providers would have the greatest access to call detail information. In response to the proposed categories of covered providers, several commenters urged the Commission to clarify or expand what is considered a covered provider, noting that the first facilities-based provider in a call path is not always the entity with the most direct access to call delivery

data. Upon reviewing the record, we agree and conclude that the entity with the most direct access to call delivery data and the ability to control the call path (either directly or via contract) is the appropriate entity to record, retain, and report the relevant data. Accordingly, we conclude that these rules should 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, regardless of whether those providers are facilities-based. The 100,000-subscriber-line figure should include the total of all of a provider's business and residential fixed subscriber lines and mobile phones, aggregated over all of the provider's affiliates. By "initial long-distance call path choice," we refer to the static or dynamic selection of the path for a long-distance call based on the called number of the individual call. For facilities-based providers, this decision may include choosing to deliver the call on the provider's own network. This approach will ensure that we impose data-related requirements on the providers that have the relevant information. Examples may illustrate how this rule would work in practice:

- If originating provider A hands all long-distance calls to a single IXC-1 under a 12-month contract, originating provider A is not a "covered provider" for purposes of these rules. If IXC-1 examines the number called in order to select among alternative downstream providers LCR-1, LCR-2, and LCR-3, then IXC-1 would be the covered provider because it is making the initial route selection decision. The intermediate providers LCR-1, LCR-2, and LCR-3 are not covered providers in this example.
- If originating provider B is allocating long distance calls between IXC-2 and IXC-3 based on geographic origination (e.g., different LATAs), volume (e.g., 50% to IXC-2 and 50% to IXC-3), or basic jurisdiction (i.e., all intrastate to IXC-2, and all interstate and international to IXC-3), and IXC-2 and IXC-3 are making the initial route selection among downstream intermediate providers based on the called party number, then IXC-2 and IXC-3 are covered providers but originating provider B is not. Notably, 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.

- If originating provider C selects IXC-4 for all long-distance calls where the called number is east of the Mississippi River and selects IXC-5 for long-distance calls where the called number is west of the Mississippi River, then originating provider C is making the initial routing decision based on the called party's number and is a covered provider, and IXC-4 and IXC-5 are not covered providers with regard to traffic from originating provider C.

21. The *NPRM* proposed that the types of providers covered by these rules include LECs, IXCs, CMRS providers, and interconnected VoIP service providers. The Commission also sought comment on whether other types of providers, such as one-way VoIP service providers, should be subject to these rules. We conclude that long-distance voice service providers, including LECs, IXCs, CMRS providers, and interconnected and one-way VoIP service providers, must comply with these rules when they make the initial long-distance call path choice. In order for us to fulfill our statutory obligations, these providers must collect, retain, and report the information required by these rules.

22. Commenters generally support the application of the rules to LECs, IXCs, and CMRS providers. Although some commenters argue that the proposed rules should not apply to interconnected VoIP service providers, there is also significant record support for adopting the proposal to apply the rules to interconnected VoIP service providers. Commission data show that end users are increasingly obtaining service from interconnected VoIP providers, such as cable companies. For the Commission to address the serious public interest harms, we must include the providers that serve approximately one-third of residential customers. Indeed, if we do not apply these rules to providers of VoIP service, other providers could circumvent the rules by working with a VoIP service provider to ensure that the VoIP service provider makes the initial long-distance call path choice. Moreover, data and comments filed in the record indicate that calls that originated with VoIP service providers, like other originating providers, face significant rural call completion issues. Accordingly, interconnected VoIP service providers that make the initial long-distance call path choice must comply with the recording, reporting, and retention rules we adopt today.

23. For similar reasons, we see no basis for excluding one-way VoIP providers from the scope of our rules. The Commission has described one-way

VoIP services as allowing users to receive calls from, or place calls to, the PSTN, but not both; here, where we are concerned about termination issues, we refer to VoIP services that allow users to place calls to the PSTN but not to receive them. One-way VoIP providers have significant numbers of subscribers to their services, and some data suggest that one-way VoIP usage is increasing. Indeed, there is no relevant distinction in our record between "one-way" VoIP and interconnected VoIP, as the rural call completion problem we are addressing here inherently is "one way"—calls terminating to rural areas. The Commission needs data from one-way VoIP providers as well as interconnected VoIP providers in order to obtain a complete picture of the rural call completion problem and address it effectively.

24. *Affiliated Providers.* We note that covered providers may be affiliated with other covered providers. To minimize the burden on such providers, affiliated providers may record, retain, and report the information required herein individually or aggregated to the holding-company level. To the extent that covered providers choose to file individually by affiliate, they may do so in whatever arrangement they choose. For example, if three covered providers are affiliated, two of those providers may record, retain, and report data together, while the third does so individually. Furthermore, we do not consider affiliates of a covered provider to be "intermediate providers" of that covered provider for the purposes of these rules.

25. *Intermediate Providers.* The *NPRM* sought comment on whether we should impose recording, retention, and reporting requirements on intermediate providers and, if so, how. Some commenters argue that the Commission should impose these requirements on intermediate providers to provide the Commission with more data in its efforts to identify sources of call completion problems and incent intermediate providers to ensure high levels of call completion over their networks. Others disagree, questioning whether the benefits produced by these additional data would justify the burden associated with imposing recording, retention, and reporting requirements on a large number of intermediate providers.

26. At this time, we conclude that intermediate providers are not required to comply with the recording, retention, and reporting rules we adopt today. Because the rules extend to providers that make the initial long-distance call path choice, we expect the Commission

will obtain the data we need to identify and analyze patterns of call completion problems. In addition, the Act provides that "the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier or user, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or user as well as that of the person." Although we decline at this time to require intermediate providers to comply with these rules, the Enforcement Bureau continues to have the authority to investigate and collect additional information from intermediate providers when pursuing specific complaints and enforcement actions. We also remind intermediate providers that our rules already require, within thirty days of the commencement of providing services, telecommunications carriers, certain other providers of telecommunications, interconnected VoIP service providers, and certain non-interconnected VoIP providers to register with the Commission and designate agents for service of process in the District of Columbia. In the attached FNPRM, we seek comment on addressing intermediate providers going forward.

27. *Exception for Smaller Covered Providers.* Consistent with the *NPRM*, we 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 (counting the total of all business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates) to comply with the recording, retention, and reporting rules. Commenters generally supported this approach. Although some commenters argue that this threshold should be lower, doing so would burden many providers with new obligations without significantly improving the data that are filed with the Commission. Exclusion of smaller providers should not compromise our ability to monitor rural call completion problems effectively. A review of fixed and mobile subscription counts reported to the Commission via Form 477 reveals that the 100,000-subscriber-line threshold should capture as much as 95 percent of all callers. Additionally, many providers that have 100,000 or fewer subscriber lines are not covered providers because they are reselling long-distance service from other providers that make the initial long-distance call path choice. Providers that do not meet the 100,000-subscriber-line threshold continue to be subject to the prohibition against blocking calls,

the section 201 prohibition against unjust and unreasonable carrier practices, and the section 202 prohibition on unjust and unreasonable discrimination. Finally, although we exempt such providers at this time, the Enforcement Bureau continues to have the authority to investigate and collect additional information from such providers when pursuing specific complaints and enforcement actions. The Commission will continue to look into complaints from rural LECs and consumers and pursue enforcement action where warranted.

## 2. Legal Authority

28. The *NPRM* set out several sources of legal authority that support the proposals to require covered providers to retain and report call completion data, and sought comment on the conclusion that such authority was sufficient to adopt the proposals and “any additional sources of possible authority.” We conclude that we have ample direct authority to adopt this Order and the accompanying rules by virtue of sections 1, 4(i), 201(b), 202(a), 218, 220(a), 251(a), and 403 of the Act. We also conclude that we have ancillary authority to apply the requirements adopted in this Order to VoIP service providers as discussed below, to the extent those providers are not otherwise subject to our direct authority under the Act.

29. *Direct Authority.* As an initial matter, call detail records are crucial to the Commission’s ability to fulfill its responsibilities under section 201 of the Act. As we have previously made clear, blocking, choking, reducing, or restricting traffic in any way, including to avoid transport and termination charges, generally constitutes an unjust and unreasonable practice under section 201(b) of the Act. The recording, retention, and reporting rules we adopt today will help us identify instances in which long-distance providers or their agents may have violated section 201(b) by blocking or otherwise restricting or degrading calls placed to rural consumers. Once such instances have been identified, we can then intelligently marshal our resources. For example, we can use those data to evaluate provider performance and to inform enforcement actions, where necessary. We anticipate that this prospect of enforcement will help to further deter providers from engaging in unjust or unreasonable practices and hence reduce call completion problems to customers in rural America. Indeed, as providers collect data as required under this Order, many will have greater insight into their performance

and that of their intermediate providers than they have had in the past. These data also will enable the Commission to evaluate the need for other steps, whether more specific requirements implementing section 201(b), such as specific standards regarding call completion performance, or other actions. For similar reasons, the records to be reported under our new rules also will aid the Commission’s efforts to ensure that provider practices, facilities, or services do not unjustly or unreasonably discriminate against rural localities, which could violate section 202(a).

30. Our authority to adopt these rules also derives from section 251(a) because these rules will allow us to ensure that all Americans in rural and nonrural areas receive the benefits of interconnection. For example, the record reflects that some providers are purchasing voice termination services that are of low quality—both in terms of quality of service and in terms of the reliability of delivery to terminating carriers—and rely on indirect interconnection with rural carriers that is not always reliable. To identify the source of the problems in terminating calls—and to assess whether there is a potential failure of “direct or indirect interconnection” of the sort the Commission can address under section 251(a)(1)—the Commission needs relevant data. Likewise, insofar as individuals with disabilities live in rural areas experiencing call completion problems, these data are likely to be important tools in targeting investigations of whether long distance providers have configured their networks in ways that do not comply with the accessibility requirements adopted under section 255, as required by section 251(a)(2), and if so, what further actions are warranted.

31. Moreover, the Act provides the Commission with ample authority to: (1) Inquire into and keep itself apprised of carriers’ business management practices; (2) obtain from carriers full and complete information necessary to enable the Commission to perform the duties for which it was created; and (3) prescribe the form for these records and reports. Adopting recording, retention, and reporting rules as described below will allow the Commission to better identify patterns of rural call completion problems and address them in fulfillment of our statutory obligations.

32. Our actions also advance the goals set out in other provisions of the Act. Section 1 of the Act makes clear that the Commission’s purposes include “to make available, so far as possible, to all

the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communications.”

33. We disagree with the sole commenter who questioned our jurisdiction to apply recording, retention, and reporting requirements to intrastate long distance calls. Telephone services are jurisdictionally mixed services, and allowing providers to record, retain, and report only interstate information would provide an incomplete picture of the rural call completion problem and leave us poorly equipped to ensure that calls are being properly completed. Indeed, to the extent that our data collection will help us diagnose precisely where rural call failures occur in the network (and that network is used for both intrastate and interstate calls), collecting only a partial picture of rural call completion rates may prevent us from ensuring that interstate calls are properly being completed. In addition, as the Supreme Court has made clear, “[section] 201(b) *explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies,” which includes matters covered by section 251(a). We therefore have authority to adopt the data collection, retention, and reporting rules in this Order both for interstate and intrastate traffic.

34. Many commenters support applying the recording and reporting obligations to intrastate as well as interstate long-distance calls. Our state partners, in particular, strongly agree that we should apply our requirements to intrastate calls. We look forward to working with our state partners—some of whom may be strained for resources to address these problems themselves—to ensure that customers of rural carriers do not continue to suffer from poor termination rates.

35. *Ancillary Authority.* The Commission has ancillary authority to impose these rules on providers of interconnected and one-way VoIP services, to the extent that they are not already subject to the direct authority just described. Most commenters agree. Ancillary authority may be employed, at the Commission’s discretion, when the Act “covers the regulated subject” and the assertion of jurisdiction is “reasonably ancillary to the effective performance of [the Commission’s] various responsibilities.” Both predicates for ancillary authority are satisfied here.

36. First, the Act gives the Commission jurisdiction over interstate “communication by wire or radio.” VoIP service connected to the PSTN is clearly such communication, because it involves transmission of voice by aid of wire, cable, or other like connection and/or transmission of voice by radio. These services are therefore covered by the Commission’s general jurisdictional grant under Title I.

37. Second, requiring providers of VoIP service to comply with these recording, retention, and reporting requirements is “reasonably ancillary to the [FCC’s] effective performance of its statutorily mandated responsibilities” under sections 201(b), 202(a), and 251(a)(1). The problems that cause us to impose these requirements relate to terminating LECs—clearly common carriers providing interstate service—that are unable to provide satisfactory service to their customers due to the routing practices of other providers handling the call, thus leaving these terminating LECs susceptible to erroneous complaints that they are engaged in unjust, unreasonable, or otherwise unlawful charges or practices under sections 201(b), 202(a), or a combination thereof. These LECs offer their customers a telephone service that allows the customer to receive long-distance calls from anywhere, but due to other providers’ routing practices, interconnection arrangements, and/or network configurations, calls to the rural LECs’ customers have experienced significant problems with reliability. The rules we adopt in this Order will help clarify where the blame lies, alleviating the problem of erroneous complaints lodged against terminating rural LECs by helping resolve complaints in an expeditious manner and reducing the burden on all parties, including rural LECs and the Commission. VoIP service constitutes a significant and growing portion of the long-distance telephone market, and according to evidence in the record is also causing some terminating LECs to be unable to ensure their customers a reasonable quality of service. Absent the application of these rules to providers of VoIP service connected to the PSTN, terminating LECs may be suspected of causing rural customers to experience service problems that in fact were caused by VoIP providers or their intermediate providers (and the interconnection arrangements between and among these providers), and may unfairly be the subject of complaints. The prevention of this problem through the periodic reporting of relevant data is reasonably ancillary to the effective

performance of our duties under sections 201(b) and 202(a).

38. In addition, if we do not apply these requirements to providers of VoIP service, telecommunications carriers could evade the rules by partnering with a VoIP provider in a way that allows the VoIP provider to make the initial call routing decision, thereby allowing the carrier to circumvent the requirements we adopt today and undermine the purpose of those rules. Such a carrier could therefore arrange for low-cost, low-quality terminations of its customers’ calls to the customers of rural LECs without the threat of enforcement action from the Commission. For example, there is evidence on the record that, in at least one instance, a non-facilities-based reseller makes the initial long-distance call path choice. If that reseller making the initial long-distance call path choice uses VoIP technology, in the absence of recording, retention, and reporting requirements for VoIP providers, both it and the customers for which it makes the initial long-distance call path choice would avoid these rules, and the Commission would receive no data on retail long-distance call attempts made by the customers of the providers using the reseller’s services. Such circumvention would prevent “the effective performance of [our] statutorily mandated responsibilities” under sections 201(b) and 202(a); therefore extending our rules to cover VoIP long-distance providers and eliminating this opportunity for circumvention is “reasonably ancillary” to the effective performance of our duties for this reason as well.

39. The recording and reporting requirements will also aid the Commission in ensuring that VoIP providers fulfill their obligations pursuant to the call blocking ban extended to one-way and interconnected VoIP service providers in the *USF/ICC Transformation Order*, and the application of the rules we adopt today to providers of VoIP service connected to the PSTN is therefore reasonably ancillary to the same statutory authority that provided the basis for the relevant Commission action in the *USF/ICC Transformation Order*. For these reasons, we conclude that imposing the recording, retention, and reporting requirements meets the second predicate for ancillary authority.

### 3. Recording and Retention Requirements

40. The *NPRM* proposed to require covered providers to record and retain the following information for each long-distance call attempt: Calling party

number; called party number; date; time of day; whether the call is handed off to an intermediate provider and, if so, which intermediate provider; whether the call is going to a rural carrier and, if so, which rural carrier, as identified by its OCN; whether the call is interstate; and whether the call attempt was answered. We sought comment on this approach and on the degree to which providers typically retain this information in the ordinary course of business. We now conclude that these data—as well as certain cause code information—are necessary to permit us to identify and redress call completion problems.

41. Covered providers must begin recording the required data on the first day of the calendar month that is at least 20 days after the effective date of the information collections in these rules, which will be announced in the **Federal Register** upon approval of the collections by the Office of Management and Budget (OMB). Thus, for example, if the effective date of the information collections as announced in the **Federal Register** is on January 5, providers must begin recording the required data on February 1; if the effective date as announced is on January 20, providers must begin recording their data on March 1. The Wireline Competition Bureau will also issue a public notice announcing when providers must begin recording data.

#### a. Data To Be Recorded and Retained

42. On balance, the record supports the categories of call attempt data proposed in the *NPRM*. The Rural Associations argue that “this information is or should be readily available to providers since it is typically used to calculate bills and [for] call verification as well as to confirm charges assessed by other providers for transport and termination.” Although some commenters claim that most carriers do not currently retain the proposed call detail information, or retain only some of the information, we find that the proposed categories of call data are necessary for the Commission to monitor rural call completion problems. Having access to call detail records (CDRs) is essential for carriers to identify patterns of problems and develop effective, targeted solutions. If, for example, these CDRs reveal a particularly low call completion rate to a specific rural OCN, this might indicate an inaccuracy in that provider’s routing tables or the presence of a downstream intermediate provider engaged in call blocking. Identifying such patterns would be significantly more difficult without recording and retaining call

detail records at the level of granularity required by the rules we adopt today. While we are mindful of the burdens, particularly on providers that do not already collect or retain this information, we find that the information we require is narrowly tailored to give the Commission data necessary to analyze the issue and take action to address call completion problems.

43. We also agree with those commenters that encourage the Commission to require covered providers to record and retain certain signaling cause code information. The information would allow providers and the Commission to calculate and evaluate the statistical significance of a provider's call answer rate, which is the ratio of the number of calls answered to the number of calls attempted. The call answer rate provides valuable information for identifying problem areas but does not distinguish among categories of calls that are not answered. To have a better understanding of the rural call termination problems, having cause codes for unanswered calls will allow us to distinguish among calls that generate busy signals, calls that ring but are not answered, and calls to unassigned numbers, and to identify calls that never reach the intended destination. We recognize that these data are imperfect—we understand, for example, that user busy signaling may in reality reflect network problems—but they will improve our ability as well as that of providers to monitor performance and narrow in on specific problems. As such, in addition to the eight data points proposed in the *NPRM*, we require covered providers to record an indication whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number. For most providers, this indication is likely to take the form of an SS7 signaling cause code or SIP signaling message code associated with each call attempt.

44. In contrast, we disagree with commenters that encourage the Commission to require covered providers to record and retain post-dial delay. Because the retention and reporting of average post-dial delay information is of limited utility, and the accumulation and reporting of useful post-dial delay data by rural OCN is complex, we decline to add this category of call detail information to the recording and retention requirements.

45. *Interstate and Intrastate Call Data.* We require covered providers to record data for all domestic long-distance calls, regardless of whether the calls are

interstate or intrastate, and to report data on interstate and intrastate calls separately. To identify the source of problems and take appropriate action, we need complete data. Indeed, several state entities support the Commission's collection of interstate and intrastate call data as a positive step for monitoring rural call completion problems.

46. While we considered providing greater flexibility to providers to choose whether to record and report data for interstate and intrastate call attempts separately or together, we decide that having consistent data sets across providers is necessary to a clear analysis of rural call completion problems. For example, if we were to compare the performances of various providers in completing calls to a particular rural destination, it would be important to know that the performances we were comparing included the same types of calls (e.g., interstate, intrastate, or both). In addition, inconsistent data could potentially mask problems that consumers are actually experiencing, if the call volume for one category is substantially higher than the other. We will also be better able to advise our state partners of relevant problems within their states. While the record suggests that distinguishing between interstate and intrastate calls may require some providers to make adjustments to their systems, we believe these adjustments are warranted so that we can quickly and efficiently identify and pursue any problems.

47. One commenter suggests that the Commission should limit the requirements to interstate calls so that intrastate long-distance providers will not be burdened by duplicative or conflicting state requirements. While some states are acting to address rural call completion problems, we are not aware of any overlap or conflict with the rules we adopt today. Indeed, we believe that these rules will help states monitor and address rural call completion problems too, and also enable them to address rural call completion problems with us jointly. Thus, we disagree that collecting intrastate call information will be duplicative of state requirements. To the extent that covered providers identify areas where the requirements we adopt today duplicate or conflict with state commission regulation, we will consider those specific circumstances when they are brought to our attention.

#### b. Categories of Call Attempts To Be Recorded

48. The *NPRM* proposed to categorize long-distance call attempts by type of

originating and terminating provider. The *NPRM* proposed that the data collection requirements cover, at a minimum, the following categories of long-distance call traffic: Originating provider to rural telephone company (including rural CLEC), originating provider to nonrural LEC (including nonrural CLEC), first facilities-based provider to rural telephone company (including rural CLEC), and first facilities-based provider to nonrural LEC (including nonrural CLEC). The *NPRM* sought comment on whether all these proposed categories are necessary and whether other categories of calls should also be included.

49. We conclude that the only call attempts that need to be retained are those to incumbent LECs that are rural telephone companies, as identified by OCN. Evidence indicates that the rural call completion problems are largely confined to such carriers; one reason may be that rate-of-return carriers have terminating access rates tend to be higher than those of other carriers. In addition, we note that originating providers process substantially more calls to nonrural areas than to rural areas each day—according to Verizon, 89.5 percent of long-distance calls may be to nonrural destinations. Thus requiring covered providers to retain records only for calls to rural incumbent LECs may substantially reduce the burden of compliance. Finally, we are unaware of any complaints that the list of proposed rural OCNs on which the Commission sought comment did not include rural competitive LECs. Indeed, NTCA agrees that so long as we retain the data for calls to rural incumbents, there is no need to maintain that same data for calls to nonrural carriers.

50. We disagree with the commenter that argues we should include calls that terminate to CMRS subscribers. Evidence indicates that calls to CMRS customers are unlikely to suffer from the completion problems affecting long-distance calls to rural wireline telephone subscribers because calls to CMRS subscribers normally do not incur high termination access charges in rural areas. Moreover, calls that terminate to CMRS customers have not been the subject of the same or similar volume of complaints as have calls to rural LECs. Therefore, we decline to include calls that terminate to CMRS subscribers in the categories of call attempts to be recorded and retained.

51. *Calls delivered on-network.* One commenter asserts that intraLATA toll traffic and interLATA traffic carried on its own network and handed off directly by the originating provider to the terminating LEC should be excluded



because this traffic would not likely cause call completion issues. Even if this traffic would incur fewer call completion issues, we decline to exclude this traffic because it provides an important benchmark for issue-free performance. This is especially true in instances where a provider may be using both on-net and off-net routes to deliver calls to the same terminating provider.

52. *Autodialer Traffic.* The *NPRM* acknowledged that some providers may handle substantial amounts of autodialer traffic on behalf of business customers who may have call completion expectations and capacity requirements that differ from those of residential and business callers. The Commission noted, for example, that an autodialer may be programmed to hang up before a call attempt can be answered by voicemail or an answering machine. We thus sought comment on whether such traffic can be reliably identified and, to the extent that it can be identified, whether it should be excluded from the recording and retention requirements.

53. Some commenters indicate that they can reliably identify retail autodialer traffic because it is delivered on a dedicated connection. Another commenter, however, argues that such traffic cannot be reliably identified. To the extent that it can be identified, several commenters suggest that autodialer traffic should be excluded because it has the potential to skew call completion results. One commenter suggests that the Commission should only allow covered providers to exclude autodialer traffic to the extent that they can identify and segregate emergency autodialer call attempts, while another commenter argues that all autodialer traffic should be included in the recording and retention requirements, particularly given concerns about completion of important autodialed emergency alert calls.

54. While we agree that there are characteristics unique to autodialer traffic that may make it likely to skew call completion performance results, the record in this proceeding is unclear on the degree to which providers can reliably identify and segregate this traffic when recording their long-distance call attempts. We are confident that the impact of autodialer traffic can be accounted for and will not undermine the reliability of the data for our purposes. For these reasons, we require covered providers to include autodialer traffic in their recording, retention and reporting. Covered providers may, however, submit separate calculations in their reports to

the Commission that segregate autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic. This approach should help the Commission examine the effects of autodialer traffic on call completion rates and the degree to which those effects are magnified in more sparsely populated rural numbering blocks, as well as to identify more effective means of segregating this traffic.

#### c. Inclusion or Exclusion of Certain Call Attempt Types

55. The *NPRM* sought comment on the feasibility and appropriateness of including or excluding certain types of call attempts from the recording and retention requirements. For the reasons set forth below, we include call attempts of very short duration and exclude call attempts handed back to an upstream provider and call attempts to toll-free numbers.

56. *Calls of Short Duration.* The *NPRM* sought comment on whether calls of very short duration, such as those lasting for less than two seconds, should be excluded from the recording and retention requirements. Some commenters encourage the Commission to include these calls while others contend that we should exclude these calls “because they are often wrong numbers, are made by mass dialers, and/or do not provide the called party ample time to answer.” We find that it is appropriate to include calls of short duration. While there are myriad reasons why a call may be very brief, a short call could reflect an inability to complete a call to the intended called party, a dropped call, poor call quality, or that the calling party hung up just as the called party answered, all of which are relevant to the issues the Commission is attempting to address. We thus conclude that calls of very short duration should be included in the recording and retention requirements. Covered providers may submit an explanation for any apparent anomalies when they submit their reports.

57. *Calls Handed Back.* The *NPRM* proposed to exclude call attempts that are handed back to the upstream provider in order to avoid double-counting of the same phone call, and sought comment on the feasibility and appropriateness of doing so. The record strongly supports the proposal and several commenters contend that it is “easily achievable,” while CTIA claims that excluding these attempts will require the development of new systems to identify these calls.

58. We find that excluding call attempts handed back to the upstream provider is both appropriate and practicable. To obtain a fair measure of total call attempts, we find it appropriate to exclude call attempts handed back to the upstream provider from the recording and retention requirements if the upstream provider makes further attempts to complete the call, whether on its own network or through a different intermediate provider. Covered providers should confirm that they have excluded such hand backs when reporting their results. Inteliquent observes that some providers, especially CMRS providers, are “unable to take back a call that an intermediate provider is unable to complete.” Our understanding is that calls are not handed back to originating providers in such cases, and these rules would not apply as there are no calls that are handed back and no new systems for detecting calls handed back would be required. Under those circumstances, there is no risk of double counting a single call attempt, so there is no need for CMRS providers to develop new systems to properly account for such calls.

59. *Toll-Free Numbers.* The *NPRM* sought comment on whether calls to toll-free numbers can be reliably identified and excluded. Some commenters argue that calls to toll-free numbers should be excluded, noting that in many instances it is the toll-free service provider, and not the originating service provider, that controls the routing of those call attempts. However, other commenters contend that calls to toll-free numbers should not be excluded from the recording and retention requirements.

60. We conclude that calls to toll-free numbers should be excluded. In many instances, the originating provider has no control over the routing or the quality of call attempts to toll-free numbers, and to include these call attempts in the recording and retention requirements would require covered providers to include data on call attempts for which they can take no remedial steps in the event of completion problems. We thus exclude call attempts to toll-free numbers from the recording and retention requirements.

#### d. Retention Period

61. The *NPRM* proposed that covered providers retain call detail records in a readily retrievable form for at least six calendar months. We find that the six-month retention period best balances the Commission’s need for access to these data in support of its efforts to

eliminate rural call completion problems, including enforcement actions, with the burden on providers associated with compliance. Some commenters support the six-month retention period, emphasizing the utility of the recording and retention requirements in the Commission's efforts to identify patterns of rural call completion problems and take enforcement action where appropriate. Others urge us to adopt a longer or shorter retention period.

62. A six-month retention period is consistent with our decision to require quarterly reporting to the Commission. If we were to adopt a shorter retention period, such as the three months suggested by some commenters, the records underlying the first month reflected in the report might have been purged before the Commission had a reasonable opportunity to review the quarterly report. Alternatively, if the Commission adopted a shorter retention period, it likely would need to require more frequent reporting to provide time to review reports before covered providers purged call records summarized in the report. This increased reporting frequency, in turn, would increase the burden on covered providers. Thus we conclude that a six-month retention period (and quarterly reporting requirements) strikes the appropriate balance between the benefit of better ensuring satisfactory levels of call completion to rural areas and any associated burdens on covered providers.

63. Some commenters argue that the proposed six-month retention period is too burdensome, both in terms of up-front software and hardware costs required to develop the capability to retain this volume of data in a readily retrievable form, and in terms of ongoing personnel and systems costs associated with administering a data retention program. These commenters characterize these up-front and ongoing costs as exceeding any benefits associated with a six-month retention period. As other commenters point out, however, covered providers already collect, in the ordinary course of business, much if not all of the call data to be retained.

64. We disagree with those commenters who contend that the development, storage, and personnel costs associated with the six-month retention period are too burdensome relative to any benefits resulting from the data retained. A number of potentially covered providers appear to already have in place the capability of complying with these rules. We also note that Sprint's unsubstantiated

contention that the proposed rules will cost billions of dollars industry-wide is based on several erroneous assumptions. For example, Sprint's assertion that the rules will apply to "hundreds or thousands of other originating carriers" does not reflect the fact that our rules will apply only to providers that make the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines. In addition, the retention obligation applies only to call attempts to incumbent LECs that are rural telephone companies, which reduces the burden on covered providers. We therefore find that imposing a six-month retention period is not unduly burdensome, relative to the significant harm of call completion problems and the expected benefits of retaining the data and having access to the data underlying the periodic reports.

#### 4. Reporting Requirements

65. We require covered providers to submit a certified report to the Commission once per calendar quarter that includes for each full month in that quarter: (1) For each rural OCN, the OCN, the state, the total number of attempted interstate calls, the number of attempted interstate calls that were answered, and the number of attempted interstate calls that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number; (2) the same information described in (1), but for intrastate calls; (3) the same information regarding attempted interstate calls described in (1), but for nonrural OCNs in the aggregate; and (4) the same information regarding attempted intrastate calls described in (2), but for nonrural OCNs in the aggregate. Using these data, we will calculate the percentage of calls answered (the call answer rate) and the percentage of calls completed to the terminating provider regardless of whether answered or unanswered by the user (the network effectiveness ratio). We will also calculate the totals and values for the rural OCNs in the aggregate. The categories of call attempts and what constitutes a call attempt are addressed above in section III.A.3. As proposed in the *NPRM*, the reports will be submitted in electronic form using a template specified by the Commission.

66. In Appendix C, attached to the Report and Order, we provide a template of the mandatory report in the form of an electronic spreadsheet that will be filed with the Commission each quarter. As noted above, covered providers must include autodialer traffic in their reports, but they may submit

separate calculations that segregate autodialer traffic from other traffic, accompanied by an explanation of the method the provider used to identify the autodialer traffic. Before any reports are due, the Wireline Competition Bureau will release a public notice that explains the filing mechanism in detail. Bureau staff will work with providers to ensure that the providers have the tools they need to complete and file the form in the least burdensome manner possible. Because the reporting requirements are an information collection, no reports will be required until the collection has been approved by OMB under the Paperwork Reduction Act. The effective date of the information collections in these rules will be announced in the **Federal Register**, and covered providers must begin recording the data included in the reports they file with the Commission on the first day of the calendar month that is at least 20 days after the effective date.

67. Originating long-distance voice service providers that do not make the initial long-distance call path decision for more than 100,000 domestic retail subscriber lines are not required to comply with these recording and reporting requirements. Rather, the entity or entities that make the initial long-distance call path decision for calls from those providers' end-user customers must record and report data for those calls. To address rural call completion problems, it is important to ensure that call attempts from all originating long-distance providers that have more than 100,000 domestic retail subscriber lines but do not make the initial long-distance call path choice are accounted for in the reports we receive. Accordingly, we require all originating long-distance voice service providers that have more than 100,000 domestic retail subscriber lines but that, for reasons set forth in this paragraph, are not required to file quarterly reports to file a one-time letter in WC Docket No. 13-39 explaining that they do not make the initial long-distance call path choice for more than 100,000 long-distance voice service subscriber lines and identifying the long-distance provider or providers to which they hand off their end-user customers' calls. This letter must be submitted to the Commission by the date on which recording and retention is required to begin, and a copy must be submitted simultaneously to each provider identified in the letter as having reporting responsibility.

#### 5. Call Answer Rate and Related Information

68. The *NPRM* proposed to require that providers report the call answer

rate for each rural OCN, for all rural OCNs in the aggregate, and for nonrural OCNs in the aggregate, and report the call answer rates separately for interstate and intrastate calls. After reviewing the record, we require covered providers to report data that will allow the Commission to calculate the call answer rate, rather than requiring them to report the call answer rate itself. We also require covered providers to report data regarding unanswered calls. Specifically, we require covered providers to report, for each rural OCN and for nonrural OCNs in the aggregate but separated by interstate and intrastate call attempts: (a) The total number of call attempts; (b) the number of answered calls; (c) the number of call attempts that result in “busy” code; (d) the number of call attempts that result in a “ring no answer” code; and (e) the number of call attempts for which the called number was reported to be unassigned. Collecting these data points individually will enable the Commission to calculate—for each rural OCN, for all rural OCNs in the aggregate, and for nonrural OCNs in the aggregate—both the call answer rate and the network effectiveness ratio (NER), and will provide the Commission with better insight into the reasons why calls are not answered or not reaching their destinations. We emphasize that because the report includes data for both rural and nonrural call attempts, covered providers must file reports even if they deliver no calls to rural OCNs.

69. The call answer rate that the *NPRM* described, which divides the number of calls answered by the total number of call attempts, is similar to the answer/seizure ratio (ASR), the analogous TDM voice network metric, which is often “used as a means of identifying possible changes in performance of a service.” Using these data, we can calculate call answer rates, and thus the data are a valuable metric in assisting the Commission in comparing performance across providers to uncover the source of rural call completion problems. Indeed, the call answer rate is a reasonably reliable measure because, for many users, the answer signaling message generates a billing record.

70. Several commenters urge the Commission to require covered providers to report the NER in addition to the call answer rate. One commenter notes that call answer rates may differ based on local adoption rates of voicemail service, answering machines, and fax machines and observes that because “ring no-answer” and “end user busy” calls are treated the same as answered

calls in calculating the NER, it may be superior to the call answer rate. Some commenters go further to propose that we require providers to report only the NER, instead of the call answer rate. Other commenters disagree and assert that the Commission should not require covered providers to report the additional call data that has been suggested because it would be too burdensome and potentially inaccurate.

71. After reviewing the record, we agree with commenters that we should require providers to report information beyond the call answer rate. As noted above, we require providers to retain certain cause code information from which providers and the Commission can calculate the NER as well as certain specific percentages regarding unanswered calls, such as the percent of call attempts that resulted in a busy signal. While we agree that additional data will be useful in identifying the causes of rural call completion problems, we do not agree with commenters who suggest that we should require reporting of the NER in lieu of the call answer rate. First, the call answer rate is the data point least susceptible to variations in data reporting or to differences in the quality or accuracy of signaling: The called party either answered the call or did not answer the call. The NER, by contrast, standing alone and viewed only from the originating provider’s perspective, does not similarly validate whether the call ultimately reached its destination. For example, the NER calculation is dependent on reliable signaling—because it treats “user” cause code signals the same as a completed call, any incorrect or falsified signals could mask problems such as looping or intentional blocking within the network while maintaining a high NER. For instance, busy signals are sometimes injected by intermediate providers, rather than handing back the call when they cannot find a route. Accordingly, we require covered providers to report data that will allow us to calculate the NER in addition to the call answer rate. In Appendix C, attached to the Report and Order, we provide a specific template that covered providers will use in reporting their data, which will capture the information described above while accommodating differences in the specific cause codes or other data that providers may have, to give them flexibility to report such data based on their own network configurations.

72. “Answered call.” The *NPRM* defined the term “answered call” to mean “a call that is answered by the called party, including by voicemail service, facsimile machine or answering

machine.” One commenter recommends that we expand the definition of “answered call” to mean “a call that was answered by or on behalf of the called party (including calls completed to devices, services or parties that answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system or any such system that cause the network to register that the terminating party has gone off hook).” We adopt this recommendation, with some modification, because we conclude it is more comprehensive. Thus the term “answered call” means a call that was answered by or on behalf of the called party (including calls completed to devices, services or parties that answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system), causing the network to register that the terminating party is prepared to receive information from the calling user.

#### a. Reporting by Operating Company Number

73. We require each covered provider to report monthly information for each rural OCN to which the provider attempted to deliver calls. As the *NPRM* explained, it is necessary to measure performance at the individual rural incumbent LEC level, as identified by OCN, to ensure that poor performance to any individual rural incumbent LEC is not masked, as it otherwise would be by averaging together calls to all rural incumbent LECs, or averaging call data for rural and nonrural areas. Some commenters support reporting the data for each rural operating company as proposed, and several covered providers state that they can readily satisfy a requirement of reporting for each rural operating company. As noted above, the Commission proposed a list of rural OCNs, to be maintained by NECA, for which call completion performance must be recorded, retained, and reported, and it sought comment on the completeness of the list and its suitability for use upon adoption of the rules proposed in the *NPRM*. We received no comment opposing the use of this list or arguing that it was overinclusive or underinclusive in any way, and we believe that the proposed list will provide the Commission with the data we need to achieve the objectives identified in this Order. Therefore, we conclude that covered providers must use the rural OCN list as proposed in the *List of Rural OCNs Public Notice*. To further improve administration of the recording and reporting process, the Wireline Competition Bureau will release a

public notice shortly after release of this Order providing a list, also compiled and maintained by NECA, of OCNs associated with incumbent LECs that are not rural telephone companies; covered providers must use this list to compile the data for nonrural call attempts that must be recorded and reported to the Commission under these rules. Once the information collections in the Order become effective, we direct NECA to update the lists of rural and nonrural OCNs annually and provide them to the Wireline Competition Bureau in time for the Bureau to publish the lists no later than November 15. For purposes of complying with the recording and reporting rules adopted herein, those lists will define the rural OCNs and nonrural OCNs at issue for the following calendar year.

74. Other commenters support the proposed reporting while suggesting that additional data should also be reported. We find that the data that will be reported under this Order should be sufficient to enable the Commission to analyze and address rural call completion problems, and thus we do not expect the benefits of reporting the proposed additional data to outweigh the burdens of doing so.

75. Some commenters indicate that they do not categorize calls by terminating OCN and that to do so would be burdensome. We are not convinced that the requirement is unreasonable or overly burdensome. To make the routing selection for a call, a provider typically begins with the same level of identification of the called number. As we have noted, several originating providers already categorize calls by OCN in order to analyze their performance to rural areas. Indeed, these data seem essential to providers for distinguishing rural and nonrural calls and performance, the very problem we seek to address through this proceeding. We understand that there are several commercial reference databases available for identifying the OCNs for all domestic telephone numbers. We thus find that any burden to these covered providers is outweighed by the importance of this information to meeting our statutory obligations.

#### b. Reporting for OCNs With 100 Attempts or More

76. The *NPRM* proposed that covered long-distance providers be required to report the call answer rate for those rural OCNs to which 100 or more calls were attempted during the month, and also the call attempt and answer data on which the calculation is based. Some commenters have proposed that we

increase the threshold to as many as 1,000 attempts per month to limit the number of OCNs being reported, and others proposed substantially reducing the threshold, including removing the threshold completely.

77. We agree with the commenters who recommend that we eliminate the minimum calls per month threshold for reporting by rural OCN. As some commenters observe, all attempts have to be counted by OCN before a provider can then exclude those below a threshold from the submitted report and it is less burdensome to simply report complete results for all OCN results than it is to take the additional step of applying a threshold before doing so. In addition to being less burdensome on covered providers, this adjustment will permit the Commission to more reliably study data aggregated across all providers for an individual OCN. The Commission will weigh the statistical significance of the data on OCNs with small numbers of call attempts per month that it will likely receive from covered providers in their individual reports.

#### c. Reporting for Peak Periods Only

78. The *NPRM* asked whether reports should cover all call attempts or just those attempted in some peak period, such as between noon and 6:00 p.m. Eastern time. Commenters generally opposed limiting call attempts to those made during a peak period. The Rural Associations observe that “[l]imiting reporting to peak hours suggests call failures are attributable solely to network congestion.”

79. We conclude that we will obtain the most informative data by collecting data on all call attempts, rather than attempts during a peak period. While we recognize that a disproportionate percentage of call failures may be attributable to intermediate providers whose facilities are poorly engineered or inadequately sized for loads occurring during peak hours, there is little support in the record for limiting reporting to peak periods and strong support for requiring reporting that covers all call attempts. To the extent that a covered provider requires data on peak periods data to analyze call completion problems, the provider can extract that information from the data it collects on all calls.

#### d. Reporting Monthly Measurements

80. The *NPRM* proposed that the call answer rates for rural OCNs be calculated over a month-long period, asked if a different measurement period would be more appropriate, and asked whether the nature of chronic call

routing failures might be such that measurement data analyzed monthly masks problems that, for example, a weekly measurement period would better capture.

81. Comments vary widely on the approach to take. One carrier states that it can gain significant insight from a one-day snapshot while another recommends that the measurement period should be the whole quarter. Other commenters propose collecting data over a three-day period each month or a peak-period measurement during one sample week each month. One commenter asserts that a weekly measurement period would be more likely to capture intermittent problems. Other commenters accept the month-long measurement period and some oppose reducing the reporting interval to less than a calendar month. Two commenters state that they are comfortable with using a monthly measurement period initially, while noting that the Commission could reduce the period in the future if one month proves inadequate.

82. We adopt the proposed monthly measurement interval. As we develop experience, we may reconsider this decision. At present, the record indicates that monthly measurements are reasonably calculated to provide a reasonable snapshot of performance. We again note that for problem identification and analysis purposes, providers can extract data for smaller time spans, such as weekly figures, from the complete set of data they collect.

#### e. Timing and Frequency of Reports

83. We proposed in the *NPRM* that reports be filed quarterly with the Commission and asked on what dates they should be filed. Several commenters support reporting no more frequently than quarterly if reporting rules are adopted. Other commenters recommend that call attempt data be reported monthly in the interest of timely reporting of problems. Another commenter concerned about the timeliness of reporting recommends that covered providers submit three “rolling” months of data once a month.

84. Some parties raise concern that reporting more frequently than quarterly would be unduly burdensome. To minimize the burden while providing the Commission with sufficient information, we adopt a quarterly reporting interval. Concerning when the reports should be filed, we agree with commenters that assert that once reporting systems and procedures are deployed, they should be able to produce the quarterly electronic spreadsheet submission before the end

of the following calendar month. Therefore, we conclude that quarterly reports will be due on February 1 (reflecting monthly data from October through December), May 1 (reflecting monthly data from January through March), August 1 (reflecting monthly data from April through June), and November 1 (reflecting monthly data from July through September) of each year.

#### 6. Safe Harbors

85. The *NPRM* proposed two safe harbors by which providers could reduce their obligations under the data reporting and retention obligations. The first safe harbor was described as the "Managing Intermediate Provider Safe Harbor." Under this safe harbor, as proposed, a provider could have no more than two intermediate providers in a given call path before the call reaches the terminating provider. The second safe harbor, described as the "Monitoring Performance Safe Harbor," would provide some relief from the proposed rules to providers meeting certain performance standards. We adopt the Managing Intermediate Provider Safe Harbor in part, and to create incentives for providers to improve their rural call completion performance immediately, we provide a means for providers that have taken significant steps and adopted measures to ensure calls to rural areas are being completed, such as adoption of industry best practices, to seek a waiver of these data-related obligations. We do not adopt the Monitoring Performance Safe Harbor.

86. *Managing Intermediate Provider Safe Harbor.* We adopt the Managing Intermediate Provider Safe Harbor in part, to reduce a qualifying provider's reporting obligations and reduce the data retention obligations from six months to three months. Qualifying covered providers must comply with the reporting requirements for one year and must retain the call detail records described above in a readily retrievable form for only three calendar months, but must have three full months of data available at all times. To qualify, a provider must certify on an annual basis either that it uses no intermediate providers, or that all of its contracts with directly connected intermediate providers allow those intermediate providers to pass a call to no more than one additional intermediate provider (that is, a total of no more than two intermediate providers in the call path) before the call reaches the terminating provider or terminating tandem. The provider must further certify that any nondisclosure agreement with an

intermediate provider permits the covered provider to reveal the identity of the directly connected intermediate provider and any additional intermediate provider to the Commission and to the rural carrier(s) whose incoming long-distance calls are affected by intermediate provider performance. Finally, the provider must certify that if it uses intermediate providers, it has a process in place to monitor the performance of its intermediate providers. Providers may utilize the safe harbor by filing a certification on any of the four quarterly filing dates throughout the year (and filings are due annually thereafter). Thus, a provider does not need to wait until the next annual certification to take advantage of the safe harbor. At the same time, a provider must comply with our full data retention and reporting obligations for any quarter in which it no longer qualifies for the safe harbor (*i.e.*, its business practices cease to comply with the terms of its certification).

87. Several commenters oppose this safe harbor, expressing skepticism about its efficacy in preventing rural call completion problems. NARUC and the rural associations describe the safe harbor as premature until it can be validated by a history of reporting. We disagree. Our experience in investigating and resolving rural call completion complaints suggests that problems with routing calls to rural areas typically arise where more than two intermediate providers are involved in transmitting a call. An originating provider that limits the intermediate providers in the call path to two is better able to manage performance to rural destinations than an originating provider that sends calls through numerous intermediate providers, the identities of which the originating provider may not even know. We agree that "[l]imiting the number of intermediate providers that may handle a call limits the potential for lengthy call setup delays and looping."

88. Moreover, our examination of carrier practices during enforcement proceedings and when responding to complaints has revealed that the proliferation of rural call completion problems in recent years has coincided with the proliferation of intermediate providers, the use of which appears to contribute to call completion problems and often results in nearly untraceable call routes. This situation has arisen after decades of uncontroversial, well-functioning use of intermediate providers for least-cost routing. This suggests that a provider that has a manageable network with few

intermediate providers in a call path will provide better performance.

89. We do, however, modify the proposed safe harbor by requiring the same reporting for a period of one year as for providers not invoking the safe harbor and requiring the same recording requirements, but limit the retention period to three full calendar months rather than six. One year of reporting will provide the Commission with data on completion rates from safe-harbor qualifiers to ensure that such providers are achieving satisfactory rural call completion performance. Furthermore, the recording requirements ensure that the providers have the data available should there be a need to initiate investigation. And, we believe that, absent any retention requirements, providers may have an incentive to purge data quickly to avoid having relevant information for any possible investigation.

90. Even so, we reduce the burden by limiting reporting to one year and retention to three months of data for several reasons. First, we want to encourage providers to take advantage of the safe harbor and expect fewer rural call completion issues, if any, to arise regarding providers that qualify for the safe harbor. Several providers encouraged the Commission to adopt a three-month retention period to reduce the burden. Second, the Enforcement Bureau is already able to require providers to retain these records for a longer period of time and may revoke a provider's use of this safe harbor if that provider fails to comply with the safe harbor requirements. Third, because we expect rural call completion to be less of a problem for safe-harbor qualifiers, our concern that six months of record retention is necessary to ensure that the first month of data reflected in any report has not been purged before the Commission has had a reasonable opportunity to review the quarterly report is mitigated here.

91. Some commenters seek clarification on whether, if a provider other than the terminating rural ILEC operates the terminating tandem switch, that provider counts as an intermediate provider for purposes of eligibility for this safe harbor. We clarify that it does not. Our experience in investigating rural call completion complaints indicates that when a call does reach the terminating tandem, regardless of ownership, it is completed by the rural ILEC with a very high degree of reliability. Accordingly, if a provider merely operates a terminating tandem that delivers traffic to a rural ILEC, delivering traffic to the terminating tandem operated by that provider does

not count as using an additional intermediate provider for purposes of this safe harbor.

92. One commenter seeks clarification concerning the categorization of an intermediate provider that operates a comprehensive network of organizationally separate affiliates. We agree that an intermediate provider at either the first or second level includes all of the intermediate provider's affiliates.

93. Finally, the *NPRM* proposed that originating providers maintain a self-certified monitoring process to qualify for this safe harbor. Many commenters indicate that they monitor the performance of their first-level intermediate providers using a variety of key performance measures including but not limited to overall answer-seizure ratio (ASR), network effectiveness ratio (NER), and post-dial delay. One interexchange carrier requested additional guidance. Because we want to encourage providers covered by the safe harbor to analyze their own performance and that of any intermediate providers, we do not require qualifying providers to use any particular process. Instead, we require that they describe the process they use to monitor their intermediate providers in their annual filings certifying compliance with the safe harbor.

94. We note that this safe harbor decreases reporting and data retention obligations for a covered provider, but is not a safe harbor from the Commission's normal investigatory processes. For example, the Commission will continue to serve rural call completion complaints from consumers and rural carriers on service providers that invoke the safe harbor. Furthermore, we delegate authority to the Enforcement Bureau to revoke a provider's use of the safe harbor if the Bureau finds that the provider is not in compliance with the safe harbor requirements. At any time, the Bureau may request copies of the provider's contracts or agreements with intermediate providers as well as other evidence regarding the covered provider's processes for monitoring the performance of its intermediate providers. If the Bureau determines that evidence warrants revocation of the provider's safe harbor protection, the Bureau shall notify the service provider of such revocation by letter. The provider's safe harbor protection shall terminate 30 days after the revocation letter is mailed. Accordingly, any provider taking advantage of the safe harbor should be prepared to begin complying with the additional data retention requirements and the reporting requirements within 30 days.

A service provider that loses safe harbor protection in this manner may seek reconsideration or review of the Bureau's decision in accordance with the Commission's rules. While we anticipate that the need to revoke a provider's use of the safe harbor will not occur often, we must remain prepared to assess and address rural call completion issues involving providers that use the safe harbor.

95. *Waivers of Data Collection and Retention Requirements.* Although the safe harbor encourages providers to take steps to reduce the rural call completion problem, we note that the industry through the *ATIS Handbook* and other means has identified other significant steps providers can take to ensure calls to rural areas are completed. We seek comment in the *FNPRM* about imposing additional requirements to take advantage of the safe harbor in the future. While the *FNPRM* is pending, we adopt a waiver process to enable providers that have taken steps in addition to satisfying the requirements for the Managing Intermediate Provider Safe Harbor to ensure calls to rural areas are being completed to receive a waiver of the data retention obligations.

96. To encourage providers to take immediate and decisive action to redress rural call completion problems, we will consider requests for waiver of the specific reporting and data retention rules as described herein. We delegate to the Wireline Competition Bureau, in consultation with the Enforcement Bureau, the authority to act on such waiver requests. In evaluating a provider's waiver request, the Bureau should consider not only whether a provider has demonstrated that it qualifies for the Managing Intermediate Provider Safe Harbor, but also whether it persuasively demonstrates that it has processes in place to ensure that call attempts to rural incumbent LECs successfully reach their destinations, such as by adopting industry best practices. The Bureau should also consider whether the provider has demonstrated that it has capabilities and processes to monitor its own performance by the OCN of the called party's ILEC (rather than just at an aggregate level). The Bureau shall require, as a condition of a waiver, that a provider report information about rural call completion for a one-year period, and such a report may be based on a statistically valid sample of calls. In addition, the Bureau may require, as a condition of a waiver, that a provider collect and retain some data, such as data reflecting a statistically valid sample of calls to rural and non-rural areas.

97. By adopting this waiver process, we hope to encourage providers to adopt practices and processes to prevent rural call completion problems from occurring in the first place, thus benefitting rural consumers and avoiding the need for enforcement. Providers are free to file such waiver requests before the Commission receives OMB approval for the data retention and reporting obligations. We also encourage the Bureau to act upon such requests on an expedited basis.

98. *Monitoring Performance Safe Harbor.* The *NPRM* proposed a second safe harbor that would subject a provider to a reduced call completion data retention obligation and relieve the provider of all reporting obligations if the provider certified that it had met the following performance standards. The average call answer rate for all rural carriers (*i.e.*, not weighted by call volume) to which the provider attempted more than 100 calls in a month could be no more than 2 percent less than the average call answer rate for all calls it placed to nonrural carriers in the same month. Additionally, the call answer rates for 95 percent of those rural carriers to which the provider attempted more than 100 calls could be no more than 3 percent below the average rural call answer rate.

99. Some commenters objected to the suggestion implicit in this safe harbor that a small differential between rural and nonrural average call answer rates is acceptable. Other commenters suggested that the proposed differential (no more than 2 percent) may be too small to be of practical or statistical significance. One large carrier notes that the requirement that 95 percent of all rural sites be no more than 3 percent below the average rural call answer rate presupposes an abnormally narrow distribution and suggests the Commission needs to do analysis to establish permissible variance.

100. After reviewing the record, we decline to adopt the Monitoring Performance Safe Harbor at this time. We agree with commenters that we should not adopt a performance-based safe harbor before we receive any call completion data from providers.

## 7. Duration of Rules

101. In the *NPRM*, the Commission sought comment on whether any recording and reporting requirements adopted in this proceeding should expire at the end of the intercarrier compensation transition to bill-and-keep or some other point. As discussed more fully above, the *USF/ICC Transformation Order* adopted rules that should address the root causes of

many rural call completion problems. In particular, the Commission adopted a bill-and-keep methodology for all intercarrier traffic, and adopted a transition plan to gradually reduce most termination charges, which, at the end of the transition, should eliminate the financial incentive that appears to be contributing significantly to rural call completion problems.

102. Many carriers comment that the rules should expire before the transition to bill-and-keep is complete. They argue that “systemic problems with rural call completion resulting from the current access regime should disappear as the incentives to avoid high, rural terminating rates decrease,” thus the Commission should sunset the rules in this order prior to the completion of a transition to bill-and-keep. Commenters propose that targeted enforcement, scheduled reviews of the continuing need for these rules, or hard expiration deadlines will provide “more than sufficient time to determine whether a call completion issue exists in particular rural destinations or with particular intermediate carriers.”

103. Other commenters urge the Commission to refrain from setting an expiration date until these rules are clearly unnecessary. Many commenters suggest that terminating access charges and reciprocal compensation are not the only incentives for certain originating and intermediate carriers to avoid completing calls to rural customers. For example, there may be unique incentives for carriers to not complete calls in rural versus nonrural areas, because many of the calls to rural LEC exchanges “must be carried over lengthy transport and transit routes operated by third parties, to whom compensation must be paid by toll service providers,” and that “[i]n the highly competitive, low-margin long-distance toll service market, LCR providers will still be tempted to reduce their transit/transport costs by taking networking shortcuts or blocking calls to such RLEC service areas even after [many intercarrier compensation] charges go to bill-and-keep.” Further, as one commenter suggests, “[w]ith the sunset of the rules, any short term solutions could unravel the progress made, because the factors not directly linked to the ICC reform transition could trigger a relapse in the performance by the industry in completing calls to rural customers.” Other commenters note that while terminating access rates have declined, the number of call completion problems to rural areas have actually increased. Some comments suggest that any rules should not expire because the impact of VoIP providers on rural call completion

is unclear, stating that “because VoIP providers are applying less rigorous call completion standards than the rest of the PSTN, then there will continue to be a need for the rules adopted in this proceeding regardless of the level of terminating rates.”

104. Based on the record before us, we decline at this time to adopt a sunset date for the rules we adopt today. We believe that these rules will provide relief to rural consumers who are receiving inferior telephone service. The Commission must also ensure that it has the data necessary to adopt a long-term solution regarding the disparity in call completion rates between rural and nonrural areas. While the bill-and-keep transition should, to a large extent, eliminate the financial incentive structure that contributes to rural call completion problems, we agree with commenters that rural call completion problems may not be solely attributable to terminating charges.

105. Although we decline to adopt a specific sunset date, we anticipate that our need for these rules will decrease, particularly as the transition to a bill-and-keep regime continues. To assist with that examination, we direct the Wireline Competition Bureau to analyze the eight sets of reports submitted during the first two years of the data collection’s effectiveness (as well as any other information the Commission receives during that period regarding the causes of and solution to rural call completion) and to publish for public comment a report on the effectiveness of the rules, whether data collection and reporting should be reduced or eliminated for certain providers or classes of providers (including those that meet a performance-based standard over four consecutive quarters), whether the Commission should extend data collection and reporting requirements to certain intermediate providers, and how the Commission can incorporate industry best practices, such as those developed through ATIS, into its work. The Bureau shall publish that report no more than 90 days after the last reports are due for that two-year period.

106. Furthermore, to ensure that the data collection and reporting rules we adopt today do not last without review in perpetuity, the Commission shall complete a proceeding in which we reevaluate whether to keep, eliminate, or amend the data collection and reporting rules three years after they become effective. That time should be sufficient for the Commission and the public to review the data collected herein, as well as the report of the Wireline Competition Bureau, and determine whether the rules adopted

today remain in the public interest going forward.

#### 8. Voluntary Reporting by Rural Incumbent Local Exchange Carriers

107. One commenter proposes that terminating rural incumbent LECs file quarterly reports documenting the number of incoming long-distance call attempts received and the number answered on their network. We agree that a terminating rural ILEC’s call answer rate for incoming calls would be an important benchmark that could be responsive to speculation about local rural user behavior and local rural service distinctions, both among individual rural ILECs and between rural and nonrural terminating ILECs generally. It would also be an important benchmark against which to evaluate the number of call attempts that covered providers report as having reached a rural ILEC’s terminating switch or tandem, and the number that covered providers report as having been answered.

108. We think that it is in the terminating rural ILECs’ own interest to report this information on a voluntary basis. We therefore encourage, but do not require, rural ILECs to report quarterly on the number of incoming long-distance call attempts received, the number answered on its network, and the call answer rate calculation for each of the previous three months, by the reporting dates for covered providers. In the FNPRM we seek comment on whether we should mandate reporting by rural ILECs.

#### 9. Disclosure of Reported Data

109. The NPRM sought comment on whether the information that will be provided pursuant to the reporting requirements should be treated as confidential or be open to public inspection. After reviewing the record, we conclude that covered providers filing these reports may request confidential treatment of all or portions of the data they submit without filing the detailed confidentiality justification required by section 0.459 of our rules. If the Commission receives a request for, or proposes disclosure of, the information contained in the report, the provider will be notified and required to make the full showing under section 0.459 as to why confidentiality is warranted. Taking into consideration that covered providers must submit these reports quarterly, as well as the unique and relatively homogenous nature of this data collection, these streamlined procedures for requesting nondisclosure should greatly improve the ability of providers to request

confidential treatment of their data in a timely manner while minimizing the burden of doing so. The Commission will release information to states upon request, if those states are able to maintain the confidentiality of this information. The Commission imposes similar confidentiality requirements on state commissions seeking to gain access to broadband subscription data filed pursuant to our Form 477. The Commission also expects to make aggregated data available to states and the public.

110. We recognize that there may be benefits to providing public access to the information in these reports. Some commenters argue that the public and/or other entities should have access to this information because this would provide an incentive to correct call completion problems, would be effective in deterring and resolving call blocking, and would provide valuable data for rural LECs to identify the cause of uncompleted calls. We further recognize that information submitted may be confidential. Some commenters assert that the reports should not be publicly disclosed because they could result in public misperception of the nature of the call completion problem, could result in the misuse of information taken out of context, and may prove difficult to compare fairly across providers due to potentially differing abilities of providers, for example, to identify autodialer traffic or account for call attempts that are handed back to be retried using a different intermediate provider. For now, we find that the approach we adopt today appropriately balances the filers' disclosure concerns with the public need for access to this information.

#### *B. Rules To Address Ring Signaling*

111. *False Audible Ringing.* One of the rural call completion problems that parties have identified is "false audible ringing." False audible ringing occurs when an originating or intermediate provider prematurely triggers audible ring tones to the caller before the call setup request has actually reached the terminating rural provider. That is, the calling party believes the phone is ringing at the called party's premises when it is not. An originating or intermediate provider may do this to mask the silence that the caller would otherwise hear during excessive call setup time. As a result, the caller may often hang up, thinking nobody is available to receive the call. False audible ringing can also make it appear to the caller that the terminating rural provider is responsible for the call

failure, instead of the originating or intermediate provider. Once an intermediate provider provides a ringing indication to an originating provider while still processing the call, the call cannot be handed back to the preceding provider for an alternate route.

112. In the *NPRM*, the Commission proposed to mandate that audible ringing be provided to callers only after the terminating provider affirmatively signals that the called line is free and the called party is being alerted. The record overwhelming supports the adoption of the proposed rule. False audible ringing departs from longstanding and well-established telephony signaling practices. Indeed, many commenters urge the Commission to simply codify the industry standard prohibiting false audible ringing, stating that "numerous industry signaling standards and definitions . . . unambiguously establish that an audible ringing indication should be provided to the caller only after the terminating provider signals that the called line is free and the called party is being alerted." Some commenters support prohibiting false audible ringing broadly across the industry, stating that our prohibition "should be applied across all providers that allow end users to make voice calls regardless of license, function, or authority," because such a practice "is not likely to harm just consumers in rural areas; the harm could just as well fall on customers in nonrural areas, in the absence of an industry-wide rule." Because the proposed rule simply codifies longstanding industry practice, the majority of commenters do not believe such a rule is unduly burdensome.

113. Only two commenters opposed a rule prohibiting false ring signaling. The VON Coalition argues that the adoption of such a rule that could potentially thwart enhanced functionalities that VoIP providers may develop and possibly make these providers "limit their end user services in order to conform to 'traditional' call flows would be contrary to the Commission's settled deregulatory approach to VoIP." Vonage, on the other hand, argues the real underlying issue "is not 'false' ringing per se. Rather, the root issue is excessive post-dial delay in connecting a call to the terminating switch (*i.e.*, post-dial delay that is sometimes filled by 'false' ringing) . . . which may simply be used by providers to ensure that the calling party does not hang up before the call is answered because the calling party hears a relatively prolonged silence." They further argue that "[p]rohibiting false ringing could have unintended consequences such as

extended silence after the call is placed. This could lead to confusion and increased hang-ups by the calling party, which would increase (rather than reduce) the incidence of call completion problems." By contrast, another commenter responds that Vonage's argument "is tantamount to an argument that phone users are properly deceived into thinking that the called party's phone is ringing when in fact it is not. Deception is not sound public policy."

114. We find many benefits to adopting the proposed rule prohibiting false ring signaling, as set forth in the *NPRM*. We find that this rule will benefit both consumers and industry and avoid unnecessary confusion that may occur today about whether the call was actually delivered to the called party. Consumer expectation is simple: if a calling party hears audible ringing, the calling party believes the called party's phone is ringing or otherwise being alerted in the same timeframe. As a result of this rule, consumers will no longer prematurely hang up when the call has not even rung on the caller's side, nor will consumers mistakenly believe that the terminating rural provider is responsible for the call failure. Industry will benefit from this rule because intermediate providers will now hand back calls that have excessive set-up time to the preceding provider to find an alternate route, so that the call can ultimately be completed. Originating providers will be able to better identify (and compare) intermediate providers with patterns of service failures and, if they choose, elect other intermediate providers. Because this rule codifies a long-standing industry standard, it should not be unduly burdensome. We expect that this rule will improve the call completion rates to rural areas, therefore benefiting consumers and industry alike.

115. Accordingly, we adopt a rule prohibiting false audible ringing. More specifically, all originating and intermediate providers are prohibited from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted. We clarify that alerting the called party includes alerting devices, services or parties that can answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system or any such system that can cause the network to register that the terminating party has gone off hook. As we proposed in the *NPRM*, originating and intermediate providers must also convey audio tones and announcements sent by the terminating provider to the calling party. We apply this rule



prohibiting false audible ringing to all originating providers and intermediate providers, including local exchange carriers, interexchange carriers, commercial mobile radio service (CMRS) providers, interconnected VoIP, and one-way VoIP providers. These rules apply to both interstate and intrastate calls, as well as to both originating and terminating international calls while they traverse U.S. networks.

116. *Legal Authority.* Our authority for prohibiting false audible ringing to all originating and intermediate providers lies in section 201(b) of the Act. It is an unreasonable practice to send misleading ring sounds to customers making long-distance calls, as it may cause them to believe that the called party is not answering when in fact the call has not yet been connected, or has been connected for a shorter time than the ring sounds would lead the calling party to believe. The majority of the comments assert that false audible ringing contributes to the disparity between rural and nonrural call completion rates. Adopting a rule that prohibits false audible ringing therefore aids in the Commission's efforts to ensure that provider practices are not unjust or unreasonable.

117. We also apply this rule to interconnected and one-way VoIP providers that send calls to terminate on the PSTN, as well as intermediate providers that are not common carriers, as "reasonably ancillary to the effective performance of [our] statutorily mandated responsibilities" under section 201(b). The purpose of the rule is to address the problem of calls failing to complete to rural PSTN customers. Given the substantial role that VoIP service connected to the PSTN plays in the retail long-distance telephone market, and the potential for intermediate providers to be non-carriers, excluding such providers from the prohibition against false audible ringing would undermine the effectiveness of the rule, as well as the Commission's ability to ensure that carrier practices are both just and reasonable. Specifically, if VoIP customers or callers being indirectly served by non-carrier intermediate providers receive misleading ring sounds, leading them to mistakenly believe that the called party is not answering when in fact the called party has not been alerted, the terminating carrier may be erroneously subject to complaints regarding its perceived failure to terminate calls to its customers. Indeed, it is not "just and reasonable" for customers of rural terminating carriers not to be alerted to

incoming calls or to be alerted for less time than the calling parties believes. The Commission has previously applied ring signaling rules to interconnected VoIP service providers, including intermediate providers in a call path. For the same reasons that the Commission has authority to prohibit intermediate providers from altering the calling number, the Commission has authority to apply the false audible ringing rule to intermediate providers. The problem would not be adequately addressed without addressing the practices of VoIP service and intermediate providers.

118. Adopting a prohibition against false ring signaling will help the Commission isolate problems that are the responsibility of carriers subject to section 201(b), and help us uncover and better understand call completion issues which could otherwise be obfuscated. If we did not do so, callers would continue to think that calls were being completed that in fact had never made it to the rural LEC or its customer. Likewise, if false ring signaling were not prohibited, originating providers and some intermediate providers would treat calls passed to a downstream intermediate provider as having been answered when in fact they were not being completed. The prevention of such problems by prohibiting all originating and intermediate carriers, interconnected VoIP providers, and one-way VoIP providers from transmitting false audible signaling is therefore reasonably ancillary to the effective performance of our duties in enforcing section 201(b).

119. Finally, we apply this false audible ringing rule to all traffic, including intrastate traffic. The *USF/ICC Transformation Order* expanded the scope of our call signaling rules to encompass jurisdictionally intrastate traffic. Where providers previously were required to include the Calling Party Number (CPN) on interstate calls, the Commission required such information to be included on intrastate calls as well. The Commission noted that CPN-based services are jurisdictionally mixed services and it would be impractical and uneconomic to require the development and implementation of systems that would permit separate federal and state call signaling rules to operate. We conclude here, as we did in the *USF/ICC Transformation Order*, that it would be infeasible to have separate federal and state rules regarding false audible ringing because, *inter alia*, there would be significant confusion among consumers and long-distance providers if the presence or absence of a ring signal had a different meaning on

interstate versus intrastate calls, thus exacerbating the problems that we have seen to date. We conclude, therefore, that we have authority to extend the false audible ringing rule to intrastate traffic.

#### IV. Procedural Matters

##### A. Paperwork Reduction Act Analysis

120. This document contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. They will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA, 44 U.S.C. 3507. Prior to submission to OMB, the Commission will publish a notice in the **Federal Register** seeking public comment on the information collections. In addition, that notice will also seek comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). The information collections contained in this Report and Order will not go into effect until OMB approves the collections and the Commission has published a notice in the **Federal Register** announcing the effective date of the information collections.

##### B. Congressional Review Act

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

#### V. Final Regulatory Flexibility Analysis

122. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in WC Docket No. 13-39. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

##### A. Need for, and Objectives of, the Report and Order

123. This Report and Order (Order) continues the Commission's efforts to identify the causes of—and potential remedies for—the ongoing and widespread problems with the completion of long-distance telephone calls to rural areas. In the Order, the Commission adopts rules to address significant concerns about completion

of long distance calls to rural areas. Doing so will help ensure that long distance calls to all Americans, including rural Americans, are completed. Completion rates for long-distance calls to rural telephone company service areas are frequently poor—whether the call is significantly delayed, the called party's phone never rings, the caller hears false busy signals, or there are other problems. These failures have significant and immediate public interest ramifications, causing rural businesses to lose customers, cutting families off from their relatives in rural areas, and creating potential for dangerous delays in public safety communications in rural areas. The rules adopted in the Order are a critical step to eliminating this significant problem by improving the Commission's ability to monitor the delivery of long-distance calls to rural areas, aiding enforcement action in connection with providers' call completion practices as necessary, as well as by aiding consumers and industry by adopting a rule prohibiting false ring signaling.

124. Adopting recording, retention, and reporting requirements will substantially increase our ability to monitor and redress problems associated with completing calls to rural areas. These rules will also enhance our ability to enforce restrictions against blocking, choking, reducing, or restricting calls. The recording, retention, and reporting rules should 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 (referred to herein as "covered providers"). In most cases, this is the calling party's long-distance provider. As discussed below, covered providers include LECs, interexchange carriers (IXCs), commercial mobile radio service (CMRS) providers, and VoIP service providers. Finally, we do not apply these rules to intermediate providers.

125. The Order requires covered providers to record and retain the following information for each long-distance call to a local exchange carrier that is a rural telephone company: Calling party number; called party number; date; time of day; whether the call is handed off to an intermediate provider and, if so, which intermediate provider; whether the call is going to a rural carrier and, if so, which rural carrier, as identified by its operating company number (OCN); whether the

call is interstate; whether the call attempt was answered; and whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number. For most providers, this indication is likely to take the form of an SS7 signaling cause code or SIP signaling message code associated with each call attempt. While covered providers need not retain data for calls to nonrural OCNs, they must nonetheless record such data to the extent that it is necessary to comply with the reporting obligations described below. The Order also concludes that the most useful comparison of call completion rates is between rural and nonrural incumbent LECs, and thus excludes calls terminating to CLECs, CMRS providers, or VoIP services providers from the recording, retention, and reporting requirements. The Order also requires filers to include autodialer traffic in their recording, retention and reporting but allows them file a separate report that segregates autodialer traffic from other traffic, accompanied by an explanation of the method the used to identify the autodialer traffic. In addition, recording, retention, and reporting requirements set forth in the Order apply to call attempts of very short duration, while excluding call attempts handed back to an upstream provider and call attempts to toll-free numbers. The Order requires covered providers to retain the call detail records described above for calls to rural OCNs in a readily retrievable form for at least six calendar months, except as described in the discussion of the safe harbor, below.

126. The reporting obligations adopted in the Order require covered providers to submit a certified report to the Commission once per calendar quarter that includes, for each full month in that quarter: (1) For each rural OCN, the OCN, the state, the total number of attempted interstate calls, the number of attempted interstate calls that were answered, and the number of attempted interstate calls that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number; (2) the same information described in (1), but for intrastate calls; (3) the same information regarding attempted interstate calls described in (1), but for nonrural OCNs in the aggregate; and (4) the same information regarding attempted intrastate calls described in (2), but for nonrural OCNs in the aggregate. These data permit calculation of the percentage of calls answered (the call answer rate) and the percentage of

calls completed to the terminating provider regardless of whether answered or unanswered by the user (the network effectiveness ratio). Collecting these data points will provide the Commission with better insight into the reasons why calls are not answered or not reaching their destinations. The Order defines the term "answered call" to mean "a call that was answered by or on behalf of the called party (including calls completed to devices, services or parties that answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system or any such system that cause the network to register that the terminating party has gone off hook)." The Order requires each covered provider to report monthly information for each rural OCN to which the provider attempted to deliver calls and decline to adopt a minimum calls per month threshold for reporting by rural OCN. The Order also concludes that the Commission will obtain the most informative data by collecting data on all call attempts, rather than attempts during a peak period, and adopts a monthly measurement interval and quarterly reporting interval for covered providers. The Order also encourages rural ILECs to voluntarily report their own call answer rates by terminating rural OCN, which we believe would be an important benchmark that could be responsive to speculation about local rural user behavior and local rural service distinctions both among individual rural ILECs and between rural and nonrural terminating ILECs generally.

127. The Order adopts a rule prohibiting all originating and intermediate providers from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted, and clarifies that "alerting the called party" includes alerting devices, services or parties that can answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system or any such system that can cause the network to register that the terminating party has gone off hook. Originating and intermediate providers must also convey audio tones and announcements sent by the terminating provider to the calling party. The rule prohibiting false audible ringing applies to all originating providers and intermediate providers, including LECs, IXCs, CMRS providers, interconnected VoIP, and one-way VoIP providers.

128. The rules adopted in the Order will help the Commission, our state partners, and the reporting providers

monitor call completion performance and address problem areas. At the same time, we are mindful of the potential burdens and take actions to minimize them, particularly on smaller entities. The Order therefore limits the application of the recording, retention, and reporting requirements to providers with more than 100,000 retail customers. We also target our regulations to address the source of the problem. Because the problems appear to increase significantly when a call is handed off among multiple providers, the Order adopts a safe harbor to encourage providers to limit the number of hand offs. Specifically, providers that restrict by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path will be relieved of the reporting obligation after one year and have a reduced record retention period, although such providers may be required to comply with those requirements at the discretion of the Enforcement Bureau. Similarly, covered providers adhering to industry best practices and other measures intended to ensure robust call completion performance may apply for a waiver of these recording, retention, and reporting requirements. 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. We also note that the ring signaling integrity requirements adopted in the Order may have an economic impact on small entities, but believe that the benefits to the functioning of the PSTN and to consumers outweigh any burdens.

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

129. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA. To the extent we received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Order.

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

130. 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. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term

"small business" has the same meaning as the term "small-business concern" under the Small Business Act. 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.

131. Small Businesses. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA.

132. Wired Telecommunications Carriers. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms can be considered small.

133. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM.

134. Incumbent Local Exchange Carriers (Incumbent LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are

small businesses that may be affected by rules adopted pursuant to the NPRM.

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

136. Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

137. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to

Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

138. Prepaid Calling Card Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the NPRM.

139. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

140. Toll Resellers. The SBA has developed a small business size

standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 show that 1,523 firms provided resale services during that year. Of that number, 1,522 operated with fewer than 1000 employees and one operated with more than 1,000. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

141. Other Toll Carriers. Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

142. Wireless Telecommunications Carriers (except Satellite). Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business

to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 11,163 establishments that operated for the entire year. Of this total, 10,791 establishments had employment of 999 or fewer employees and 372 had employment of 1000 employees or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action.

143. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

144. Cable and Other Program Distribution. Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census data for 2007 shows that there were 31,996 establishments that operated that year. Of those 31,996, 1,818 operated with more than 100 employees, and 30,178 operated with fewer than 100 employees. Thus, under this size standard, the majority of firms offering cable and other program distribution services can be considered small and may be affected by rules adopted pursuant to the NPRM.

145. Cable Companies and Systems. The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable

operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,635 systems nationwide, 5,802 systems have under 10,000 subscribers, and an additional 302 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the NPRM.

146. All Other Telecommunications. The Census Bureau defines this industry as including "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." The SBA has developed a small business size standard for this category; that size standard is \$30.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,623 firms in this category that operated for the entire year. Of these, 2,478 establishments had annual receipts of under \$10 million and 145 establishments had annual receipts of \$10 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

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

147. The Order requires covered providers to submit a certified report to the Commission once per calendar quarter that includes, for each full month in that quarter: (1) For each rural OCN, the OCN, the state, the total number of attempted interstate calls, the number of attempted interstate calls that were answered, and the number of attempted interstate calls that were not answered, reported separately for call attempts signaled as (a) busy, (b) ring no answer, or (c) unassigned number; (2) the same information described in (1), but for intrastate calls; (3) the same information regarding attempted interstate calls described in (1), but for nonrural OCNs in the aggregate; and (4) the same information regarding

attempted intrastate calls described in (2), but for nonrural OCNs in the aggregate. The Order requires covered providers to record and retain the following information for each long-distance call to a local exchange carrier that is a rural telephone company: Calling party number; called party number; date; time of day; whether the call is handed off to an intermediate provider and, if so, which intermediate provider; whether the call is going to a rural carrier and, if so, which rural carrier, as identified by its operating company number (OCN); whether the call is interstate; whether the call attempt was answered; and whether the call attempt was completed to the incumbent local exchange carrier but signaled as busy, ring no answer, or unassigned number. The Commission requires covered providers to retain these records for a period including the six most recent calendar months for call attempts to rural ILECs; for those call attempts to nonrural ILECs, the rules do not require covered providers to retain records for any length of time. Compliance with these recordkeeping and retention obligations may affect small entities, and may include new administrative processes.

148. In the Order, the Commission adopts a rule prohibiting all originating and intermediate providers—including ILECs, IXCs, CMRS providers, interconnected VoIP, and one-way VoIP providers—from causing audible ringing to be sent to the caller before the terminating provider has signaled that the called party is being alerted. Compliance with these ring signaling integrity requirements may affect small entities, and may include new administrative processes.

#### *E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

149. 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."

150. The Commission is aware that some of the proposals under consideration will impact small entities by imposing costs and administrative burdens. For this reason, the Order includes a number of measures to minimize or eliminate the costs and burdens generated by compliance with the proposed rules.

151. First, the recording, reporting, and retention rules adopted in the Order apply only 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. Accordingly, smaller providers are not required to comply with these rules.

152. Additionally, the rule requiring retention of call detail records applies only to call attempts to rural incumbent ILECs, a relatively small percentage of total call attempts; call attempts to nonrural incumbent ILECs need not be retained. This approach should reduce the burden of compliance for smaller entities by reducing the costs of data storage that the rule proposed in the NPRM would have required, according to one estimate by as much as 90 percent. The Order also permits affiliated providers to record and report the information required individually or aggregated to the holding-company level, which should make it easier for smaller entities to record and report data in ways that are less burdensome to them.

153. The rules adopted in the Order also include a safe harbor provision that could reduce the economic impact on small entities. The safe harbor relieves covered providers of their reporting obligations after one year and reduces their retention obligations if they certify that: They restrict by contract directly connected intermediate providers to no more than one additional intermediate provider in the call path before the call reaches the terminating provider; any nondisclosure agreement with an intermediate provider permits the covered provider to reveal the intermediate provider's identity to the Commission and to any rural carrier whose incoming long-distance traffic is affected by the intermediate provider's performance; and they have a process in place to monitor the performance of their intermediate providers.

154. The Order delegates to the Wireline Competition Bureau, in consultation with the Enforcement Bureau, the authority to consider applications for waiver of the recordkeeping, retention, and reporting

requirements adopted in the Order. If approved, these waivers will reduce or eliminate a covered provider's recordkeeping, retention, or reporting obligations. In evaluating a provider's waiver request, the Bureau may consider: Whether a provider has demonstrated that it qualifies for the safe harbor; whether it persuasively demonstrates that it has processes in place to ensure that calls to rural incumbent LECs successfully reach their destinations, such as by adopting industry best practices; and whether the provider has demonstrated that it has capabilities and processes to monitor its own performance by the OCN of the called party's LEC. As a condition of a waiver, the Bureau will require a provider to report information about rural call completion for a one-year period, and such a report may be based on a statistically valid sample of calls. In addition, the Bureau may require, as a condition of a waiver, that a provider collect and retain some data, such as data reflecting a statistically valid sample of calls to rural and nonrural areas.

155. The Commission considered the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding. In declining to adopt a sunset date for the rules, the Commission considered whether the rules should expire on a particular date to account for the possibility that reforms to the intercarrier compensation rules may alleviate many rural call completion problems. However, the Commission must ensure that it has the data necessary to adopt a long-term solution regarding the disparity in call completion rates between rural and nonrural areas. Moreover, while the bill-and-keep transition should, to a large extent, eliminate the financial incentive structure that contributes to rural call completion problems, we conclude that rural call completion problems may not be solely attributable to terminating charges. Although declining to adopt a sunset provision could have an ongoing economic impact on both small and large entities, the Commission believes that any such impact is outweighed by the benefit of ensuring that the Commission continues to obtain the data necessary to address the rural call completion problem should the intercarrier compensation reforms alleviate only some of the issues plaguing long-distance call attempts to rural areas. Furthermore, to ensure that the data collection and reporting rules do not last without review in perpetuity,

the Order states that the Commission shall complete a proceeding in which it reevaluates whether to keep, eliminate, or amend the data collection and reporting rules three years after they become effective. That time should be sufficient for the Commission and the public to review the data collected herein and determine whether the rules adopted today remain in the public interest going forward.

156. The proposed ring signaling integrity requirements in the NPRM could have an economic impact on both small and large entities. However, the Commission believes that any impact of such requirements is outweighed by the accompanying benefits to the public and to the operation and efficiency of the long distance industry.

#### *F. Report to Congress*

157. The Commission will send a copy of the *Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

#### **VI. Ordering Clauses**

Accordingly, *it is ordered* that, pursuant to sections 1, 4(i), 201(b), 202(a), 218, 220(a), 251(a), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), 202(a), 218, 220(a), 251(a), and 403, the Report and Order IS ADOPTED.

*It is further ordered* that part 64 of the Commission's rules *is amended* as set forth in Appendix A of the Report and Order.

*It is further ordered* that, pursuant to sections 1.4(b)(1) and 1.103(a) of the Commission's rules, 47 CFR 1.4(b)(1), 1.103(a), this Report and Order *shall be effective* January 16, 2014, except for § 64.2201 of the Commission's rules, which will become effective January 31, 2014, and §§ 64.2103, 64.2105, and 64.2107 and the information collection in paragraph 67 of this Report and Order, which contains information collection requirements that have not been approved by Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

*It is further ordered* that the Commission *shall send* a copy of this Report and Order to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

*It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### **List of Subjects in 47 CFR Part 64**

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 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, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Add subpart V to part 64 to read as follows:

#### **Subpart V—Recording, Retention and Reporting of Data on Long-Distance Telephone Calls to Rural Areas and Reporting of Data on Long-Distance Telephone Calls to Nonrural Areas**

Sec.

64.2101 Definitions.  
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#### **§ 64.2101 Definitions.**

For purposes of this subpart, the following definitions will apply:

*Affiliate.* The term “affiliate” has the same meaning as in 47 U.S.C. 153(2).

*Call attempt.* The term “call attempt” means a call that results in transmission by the covered provider toward an incumbent local exchange carrier (LEC) of the initial call setup message, regardless of the voice call signaling and transmission technology used.

*Covered provider.* The term “covered provider” means a provider of long-distance voice service that makes the initial long-distance call path choice for more than 100,000 domestic retail subscriber lines, counting the total of all

business and residential fixed subscriber lines and mobile phones and aggregated over all of the providers' affiliates. A covered provider may be a local exchange carrier as defined in § 64.4001(e), an interexchange carrier as defined in § 64.4001(d), a provider of commercial mobile radio service as defined in § 20.3 of this chapter, a provider of interconnected voice over Internet Protocol (VoIP) service as defined in 47 U.S.C. 153(25), or a provider of non-interconnected VoIP service as defined in 47 U.S.C. 153(36) to the extent such a provider offers the capability to place calls to the public switched telephone network.

*Initial long-distance call path choice.* The term "initial long-distance call path choice" means the static or dynamic selection of the path for a long-distance call based on the called number of the individual call.

*Intermediate provider.* The term "intermediate provider" has the same meaning as in § 64.1600(f).

*Long-distance voice service.* The term "long-distance voice service" includes interstate interLATA, intrastate interLATA, interstate interexchange, intrastate interexchange, inter-MTA interstate and inter-MTA intrastate voice services.

*Operating company number (OCN).* The term "operating company number" means a four-place alphanumeric code that uniquely identifies a local exchange carrier.

*Rural OCN.* The term "rural OCN" means an operating company number that uniquely identifies an incumbent LEC (as defined in § 51.5 of this chapter) that is a rural telephone company (as defined in § 51.5 of this chapter). The term "nonrural OCN" means an operating company number that uniquely identifies an incumbent LEC (as defined in § 51.5 of this chapter) that is not a rural telephone company (as defined in § 51.5 of this chapter). We direct NECA to update the lists of rural and nonrural OCNs annually and provide them to the Wireline Competition Bureau in time for the Bureau to publish the lists no later than November 15. These lists will be the definitive lists of rural OCNs and nonrural OCNs for purposes of this subpart for the following calendar year.

#### § 64.2103 Retention of call attempt records.

(a) Except as described in § 64.2107, each covered provider shall record and retain information about each call attempt to a rural OCN from subscriber lines for which the covered provider makes the initial long-distance call path choice in a readily retrievable form for

a period that includes the six most recent complete calendar months.

(b) Affiliated covered providers may record and retain the information required by this rule individually or in the aggregate.

(c) A call attempt that is returned by an intermediate provider to the covered provider and reassigned shall count as a single call attempt.

(d) Call attempts to toll-free numbers, as defined in § 52.101(f) of this chapter, are excluded from these requirements.

(e) 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.

#### § 64.2105 Reporting requirements.

(a) Except as described in § 64.2107, each covered provider shall submit a certified report to the Commission in electronic form on the following quarterly schedule: February 1 (reflecting monthly data from October through December), May 1 (reflecting monthly data from January through March), August 1 (reflecting monthly data from April through June), and November 1 (reflecting monthly data from July through September). An officer or director of each covered provider must certify to the accuracy of each report.

(b) The information contained in the certified report shall include the following information about subscriber lines for which the covered provider makes the initial long-distance call path choice, reported separately for each month in that quarter:

- (1) For each rural OCN:
  - (i) The OCN;
  - (ii) The State;
  - (iii) The number of interstate call attempts;

(iv) The number of interstate call attempts that were answered;

(v) The number of interstate call attempts that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number;

(vi) The number of intrastate call attempts;

(vii) The number of intrastate call attempts that were answered; and

(viii) The number of intrastate call attempts that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number.

(2) For nonrural OCNs in the aggregate:

(i) The number of interstate call attempts;

(ii) The number of interstate call attempts that were answered;

(iii) The number of interstate call attempts that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number;

(iv) The number of intrastate call attempts;

(v) The number of intrastate call attempts that were answered; and

(vi) The number of intrastate call attempts that were not answered, reported separately for call attempts signaled as busy, ring no answer, or unassigned number.

(c) In reporting the information described in paragraph (b) of this section, a covered provider may disaggregate calls originated by automatic telephone dialing systems (as defined in § 64.1200(f)) if it includes an explanation of the method used to identify those calls.

(d) Affiliated covered providers may report this information individually or in the aggregate.

#### § 64.2107 Reduced retention and reporting requirements for qualifying providers under the Safe Harbor.

(a)(1) A covered provider may reduce its retention and reporting obligations under this subpart if it files one of the following certifications, signed by an officer or director of the covered provider regarding the accuracy and completeness of the information provided, in WC Docket No. 13–39 on any of the four quarterly filing dates established in § 64.2105 and annually thereafter.

I \_\_\_\_\_ (name), \_\_\_\_\_ (title), an officer of \_\_\_\_\_ (entity), certify that \_\_\_\_\_ (entity) uses no intermediate providers;

or

I \_\_\_\_\_ (name), \_\_\_\_\_ (title), an officer of \_\_\_\_\_ (entity), certify that

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

(2) Covered providers that file the second certification must describe the process they have in place to monitor the performance of their intermediate providers.

(b) A covered provider that meets the requirements described in paragraph (a) of this section must comply with the data retention requirements in § 64.2103 for a period that includes only the three most recent complete calendar months, so long as it continues to meet the requirements of paragraph (a) of this section. A covered provider that ceases to meet the requirements described in paragraph (a) of this section must immediately begin retaining data for six months, as required by § 64.2103.

(c) A covered provider that meets the requirements described in paragraph (a) of this section must comply with the reporting requirements in § 64.2105 for a period of one year commencing when it first filed the certification described in paragraph (a) of this section, so long as it continues to meet those paragraph (a) of this section requirements. A covered provider that ceases to meet the requirements described in paragraph (a) of this section must begin filing the reports required by § 64.2105 on the next filing deadline.

(d) Affiliated covered providers may meet the requirements of paragraph (a) of this section individually or in the aggregate.

#### § 64.2109 Disclosure of data.

(a) Providers subject to the reporting requirements in § 64.2105 of this chapter may make requests for Commission nondisclosure of the data submitted under § 0.459 of this chapter by so indicating on the report at the time that the data are submitted.

(b) The Chief of the Wireline Competition Bureau will release information to states upon request, if the

states are able to maintain the confidentiality of this information.

■ 3. Add subpart W, consisting of § 64.2201, to read as follows:

#### Subpart W—Ring Signaling Integrity

##### § 64.2201 Ringing indication requirements.

(a) A long-distance voice service provider shall not convey a ringing indication to the calling party until the terminating provider has signaled that the called party is being alerted to an incoming call, such as by ringing.

(1) If the terminating provider signals that the called party is being alerted and provides an audio tone or announcement, originating providers must cease any locally generated audible tone or announcement and convey the terminating provider's tone or announcement to the calling party.

(2) The requirements in this paragraph apply to all voice call signaling and transmission technologies and to all long-distance voice service providers, including local exchange carriers as defined in § 64.4001(e), interexchange carriers as defined in § 64.4001(d), providers of commercial mobile radio service as defined in § 20.3 of this chapter, providers of interconnected voice over Internet Protocol (VoIP) service as defined in 47 U.S.C. 153(25), and providers of non-interconnected VoIP service as defined in 47 U.S.C. 153(36) to the extent such providers offer the capability to place calls to or receive calls from the public switched telephone network.

(b) Intermediate providers must return unaltered to providers in the call path any signaling information that indicates that the terminating provider is alerting the called party, such as by ringing.

(1) An intermediate provider may not generate signaling information that indicates the terminating provider is alerting the called party. An intermediate provider must pass the signaling information indicating that the called party is being alerted unaltered to subsequent providers in the call path.

(2) Intermediate providers must also return unaltered any audio tone or announcement provided by the terminating provider.

(3) In this section, the term "intermediate provider" has the same meaning as in § 64.1600(f).

(4) The requirements in this section apply to all voice call signaling and transmission technologies.

(c) The requirements in paragraphs (a) and (b) of this section apply to both interstate and intrastate calls, as well as to both originating and terminating

international calls while they are within the United States.

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#### DEPARTMENT OF TRANSPORTATION

##### Federal Motor Carrier Safety Administration

##### 49 CFR Part 369

[Docket No. FMCSA-2012-0020]

RIN-2126-AB69; Formerly RIN 2126-AB48

##### Rescission of Quarterly Financial Reporting Requirements

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FMCSA eliminates the quarterly financial reporting requirements for certain for-hire motor carriers of property (Form QFR) and for-hire motor carriers of passengers (Form MP-1). This paperwork burden is removed without an adverse impact on safety or the Agency's ability to maintain effective commercial regulatory oversight over the for-hire trucking and passenger-carrying industries. The annual reporting requirements remain.

**DATES:** *Effective Date:* January 16, 2014.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, email or call Ms. Vivian Oliver, Office of Research and Information Technology, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590; Telephone 202-366-2974; email [Vivian.Oliver@dot.gov](mailto:Vivian.Oliver@dot.gov).

##### SUPPLEMENTARY INFORMATION:

##### Executive Summary

This action is in response to a recommendation received from the public and in response to Executive Order 13563, "Improving Regulation and Regulatory Review," which required Agencies, among other things, to prepare plans for reviewing existing rules.

The rule eliminates the quarterly financial reporting requirements for certain for-hire motor carriers of property and for-hire motor carriers of passengers. This paperwork burden can be removed without an adverse impact on safety or the Agency's ability to maintain effective commercial regulatory oversight over the for-hire trucking and passenger-carrying industries.