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

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

INITIAL COMMENTS OF THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

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THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON NOTICE OF PROPOSED RULEMAKING

I. EXECUTIVE SUMMARY

The National Association of State Utility Consumer Advocates ("NASUCA")[1] submits the following comments on the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking ("NPRM")[2] regarding an issue of key concern to American consumers: their ability to complete calls to other customers living in rural areas.[3] The record already contains ample evidence that many consumers' attempts to complete calls to rural consumers are being met with failure.[4] As the Commission states, "This causes rural businesses to lose customers, cuts families off from their relatives in rural areas, and creates potential for dangerous delays in public safety communications in rural areas."[5]

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[1] NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida as a non-profit corporation. NASUCA's members are designated by laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (e.g., the state Attorney General's office). NASUCA's associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority. These comments were prepared with the assistance of David C. Bergmann, Telecom Policy Consulting for Consumers, Columbus, Ohio.

[2] FCC 13-18 (rel. February 7, 2013); see also Public Notice DA 13-780 (rel. April 18, 2013 (setting comment and reply comment dates).

[3] NPRM, ¶ 1.

[4] Id., ¶ 1, n.2, ¶¶ 2, 4-5, 13.

[5] Id., ¶ 2, citing the September 2011 letter from the National Telecommunications Cooperative Association ("NTCA") ("*September 2011 NTCA Letter*") at 2–3.

NASUCA first points out that the FCC's focus on completion failures for interstate calls, although understandable, does not remotely cover the universe of calls impacted by call completion failures (and thereby the number of consumers harmed by call completion failures). Call completion failure problems also occur on **intrastate** calls.[6] The FCC should — at the very least — encourage action by state commissions to address this serious and widespread problem. NASUCA submits that there are other actions the FCC can take to ameliorate the intrastate side of the problem.

The Commission indicates that "[c]all completion problems appear to occur particularly in rural areas served by rate-of-return carriers, where the costs that long-distance providers incur to complete calls are generally higher than in nonrural areas."[7] Although the call completion failure complaints have come from rural rate-of-return carriers, as discussed in Section III, below, the Commission must also ensure that rural customers in non-rural carriers' territories are seeing completed calls at reasonable levels.

There is also a question about whether the call completion failure problem is principally a wireline problem, as indicated by the Commission,[8] or also extends to wireless service. Of course, wireless carriers use wireline networks to complete their customers' calls, but if these failures are less present on wireless calls, that gives wireless carriers an advantage when customers are deciding which (single) carrier they should subscribe to. Yet the evidence appears to show that wireless also has a significant call completion problem.

NASUCA then focuses on a barely-acknowledged aspect of the problem: the coincidence of call completion failures with the increasing origination, transport and termination

[6] If, as the Commission surmises, the call completion failure problem results from high intercarrier compensation ("ICC") rates charged by rural carriers (NPRM, ¶ 6), the problem is exacerbated by often-higher intrastate ICC rates.

[7] Id.

[8] Id., ¶ 25.

of voice communications using Internet Protocol ("IP"), especially voice over Internet protocol ("VoIP"), services. NASUCA is, of course, among the many parties that have long argued for the classification of VoIP as a telecommunications service, based on their functional equivalence to traditional TDM-based voice services. The present docket provides an exceptionally appropriate occasion on which the Commission might provide such a proper classification, because there is nothing more "telecom" in character than completing a telephone call. But regardless of its classification, VoIP is a key part of the problem here, and the FCC's assertion of at least ancillary authority over VoIP in this area is crucial.[9]

These initial discussions essentially address dichotomies that — at least from the customer's perspective — are either irrelevant or illusory: between interstate and intrastate calling, between wireline and wireless calling, between calling to customers of rural companies and those of non-rural companies, and between TDM-based and IP-based calling. In the end, the customer reasonably expects calls to be completed. The public interest demands that the Commission act to ensure that these expectations are realized.

NASUCA also addresses the specific reporting, record-keeping, and retention requirements proposed in the NPRM:

- NASUCA's goal for the reporting requirements is that they, to the greatest extent feasible, cover the broadest universe of calls, in order to identify those areas and carriers where consumers have been and will be harmed by industry practices. NASUCA thus supports most of the FCC's proposals in this area, but opposes limiting the reporting requirements to long-distance providers with more than 100,000 retail customers.[10]

- The Commission proposes two "safe harbors" that would allow providers to avoid the reporting requirements. The first, a "managing intermediate provider" safe harbor,[11] does not appear to incorporate any actual solution to the problem. NASUCA therefore opposes this safe harbor. The second safe harbor, involving

[9] See id., ¶¶ 19, 42.

[10] Id., ¶ 31.

[11] Id., ¶ 33.

monitoring actual performance, would allow providers that certify they have met certain call completion standards to avoid the reporting requirements.[12] The concept is appealing, but the specifics of the proposed standards are questionable, and indicate an unreasonable acceptance of a lower service quality for customers of rural carriers.

- The FCC requests comment on the duration of the reporting and record-retention rules. NASUCA submits that the key is solving the problem of call completion failure; the rules should persist until the problem has been solved, not merely until some artificial deadline that presumes that we know the cause of the problem.

- NASUCA strongly supports the Commission's proposal for rules to ensure "ring signaling integrity."[13] Such a rule would prevent the situation "when the originating provider or an intermediate provider prematurely triggers the audible ring tone to the caller before the call setup request has actually reached the terminating rural provider."[14] This "premature trigger" provides inaccurate information to the caller, and should be prohibited.

Again, NASUCA appreciates the opportunity to provide comment on solutions to the call completion failure problem. It is vital that the Commission not be deceived that mere reporting requirements will constitute a solution. The Commission — and other parties, including state commissions, consumer advocates, and rural carriers — must carefully examine those reports in order to ensure appropriate enforcement action, and take other actions to prevent recurrence of the problem. This requires the reports to be open to the public; likewise the supporting information should be public as much as possible.

II. CALL COMPLETION FAILURE IS AN INTRASTATE AS WELL AS AN INTERSTATE PROBLEM, AND MUST BE DEALT WITH BY THE STATE COMMISSIONS AS WELL AS THE FCC.

Nothing in the Commission's description of the rural call completion failure problem[15] provides any basis for an assumption that call completion failure is a phenomenon limited to

[12] Id., ¶ 35.

[13] Id., ¶ 39.

[14] Id.

[15] Id., ¶¶ 1-2, 4-6.

interstate calling. Indeed, one of the seminal ex partes in this area cited by the Commission, the *September 2011 NTCA Letter*, makes clear that the problem substantially impacts calling that is most likely to be intrastate, describing

> serious and disturbing subscriber complaints, including: a school with an auto-dial system that was unable to contact parents with emergency information; a hospital having difficulty contacting patients; a police station that failed to receive long distance calls; a small enterprise that lost tens of thousands of dollars of business when customers were unable to reach it; and, urban dwellers being unable to contact family members in rural communities.[16]

Thus it is beyond peradventure that the call completion failure problem is one that must be addressed both by the FCC and by state commissions.

In addition to legal and jurisdictional issues, there is the simple fact that the FCC lacks the resources to address all call completion failure complaints. In addition, as has often been noted, the states are closer to customers within their borders than is the FCC in the Nation's capital.

The NPRM notes a proceeding of the Oregon Public Utilities Commission addressing the issue on an intrastate level.[17] The Oregon P.U.C. adopted regulations "to prohibit intrastate telecommunications holders from blocking, choking, reducing or restricting traffic in any way."[18] The Oregon P.U.C. acted despite the position of carriers that the problem is national in scope.[19] The Oregon P.U.C. determined that prompt statewide action was necessary and appropriate to protect Oregonians.[20] The *September 2011 NARUC Letter* cited in the NPRM notes other state

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[16] *September 2011 NTCA Letter*, at 2-3.

[17] NPRM, ¶ 12. See, Re Amendments to OAR 860-032-007 to Address Call Termination Issues, AR 566, Order No. 12-478, 302 PUR4th 340 (Ore PUC Dec. 17, 2012). Oregon rulemaking homepage at www.oregon.gov/puc/Pages/telecom/call_termination_issues/call_termination_issues_workshop.aspx.

[18] Oregon P.U.C. Press Release, "Commission Adopts Rules to Tackle Rural Call Completion Problems," AR-566 (Rel. # 2012-014, Dec. 19, 2012)("Oregon Call Completion Press Release"), available at www.oregon.gov/puc/Pages/news/2012/2012014.aspx.

[19] Id. The Oregon "rules will make service providers liable for the actions of their underlying carriers."

[20] Id.

actions.[21] As observed below, the Iowa Utilities Board is addressing the problem. The FCC should support and encourage such state activity. As discussed below, the FCC should also include a break-out between interstate and intrastate call completion failures in the reports required by the rules.

Further, due to misguided state deregulatory actions, some state commissions may lack the ability to protect their consumers from carriers' call completion failures, especially where VoIP calling is involved. It is not clear whether FCC action on interstate calls will provide sufficient influence to address these intrastate problems, thus requiring state actions as well. In the interests of the consumers harmed by call completion failures, the FCC should adopt a broad solution — within its lawful jurisdiction — that will minimize the problem on a national level.[22] In addition, and perhaps more importantly, the FCC should explicitly acknowledge the proper role of the states in addressing intrastate call completion, including where VoIP calling is involved, thus clarifying for the states that they, too, have an important role to play.

Requiring individual consumers to prosecute their own complaints against their carriers is too complex. For example, a Pennsylvania consumer brought a complaint against her local carrier (Frontier) for dropped calls. Although the consumer proved that she had not received calls from family and friends, the local carrier demonstrated that its network was sound.[23]

By contrast, investigations by commission staffs or consumer advocates, including those

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[21] Letter from James Bradford Ramsey, Counsel for the National Association of Regulatory Utility Commissioners, to Hon. Julius Genachowski, Chairman, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 at 2 (filed Sept. 29, 2011) (*September 2011 NARUC Letter*), at 2, n.4.

[22] Under the FCC's approach in the USF/ICC Transformation Order, it claimed to have jurisdiction over all intercarrier compensation. That issue is on appeal. It is not much of a step to argue that the FCC has jurisdiction over completion of all intercarrier calls.

[23] Morgan v. Commonwealth Telephone Co., LLC d/b/a Frontier Communications, Docket No. C-2012-2288367, Initial Decision (Nov. 5, 2012), Final Order (Jan. 7, 2013). http://www.puc.state.pa.us/about_puc/consolidated_case_view.aspx?Docket=C-2012-2288367. Friends and family reported they sometimes could not complete wireless and wireline calls to the consumer. The caller might hear two rings and then the line would go dead. The possibility of fault by the originating or an intermediate carrier was raised but not resolved in the individual complaint.

based on consumer complaints can prove useful and effective. As a part of its normal complaint review process, the staff of the Iowa Utilities Board has investigated rural call dropping complaints in at least a half dozen recent instances, including three instances from three different parts of the state in which health care facilities complained about dropped calls and faxes potentially threatening patient care. In one case, at the request of the state consumer advocate,[24] the Iowa Board has commenced a formal investigation.[25]

In response to the Iowa investigations, the originating long distance carriers have changed the routing on calls to the NPA NXX of the affected destinations, removing the intermediate providers or underlying carriers, even while maintaining there was no problem with the original routing. These carrier actions have alleviated the problems for the individual complaining consumers going forward.

While changing the routing on calls to particular destinations thus alleviates the problems for those who have complained, it not does prevent like problems from occurring at other locations or even from recurring at a later time at the same locations. Such routing changes will not by themselves restore reliable service to rural America. What is needed is an understanding of the cause of the problem and tools with which to prevent the problem *before* it occurs.

The Iowa investigations have begun to uncover facts that may help. Companies have acknowledged that the problems are related to call routing. They have at times identified multiple layers of intermediate providers. In one case,[26] originating long distance carrier

[24] The Iowa Office of Consumer Advocate is a member of NASUCA.

[25] See Order Granting Formal Proceeding and Setting Procedural Schedule, *In re Rehabilitation Center of Allison, Iowa*, No. FCU-2012-0019 (C-2012-0129) (March 15, 2013), available at https://efs.iowa.gov/efs/SearchDocumentSearch.do?searchType=document&sortColumn=xDateFiled&sortBy=Desc&numOfResults=25&docketNumber=FCU-2012-0019. The procedural schedule in the case has since been modified.

[26] See Request for Formal Proceeding, *In re Hancock Health Systems*, Iowa Util. Bd. No. FCU-2013-0006 (C-2013-0005), filed Mar. 27, 2013, available at

(continued....)

CenturyLink was using intermediate provider Intelepeer,[27] which in turn was using Impact Telecom,[28] which in turn was using Intermetro Communications[29] in one instance and Broadvox Communications[30] in another. It is not yet clear whether this list is complete.

Perhaps, just as one would expect the number of fumbles to increase with the number of handoffs in a football play, one would expect the number of dropped calls to increase as the number of underlying carriers increases.[31] As indicated in the footnotes describing the providers identified in the preceding paragraph, it appears these providers are commonly using Internet protocols for voice communications and hence that the transition to Internet protocols is creating some difficulties that require attention.

(Continued from previous page)
https://efs.iowa.gov/efs/SearchDocumentSearch.do?searchType=document&sortColumn=xDateFiled&sortBy=Desc&numOfResults=25&docketNumber=FCU-2013-0005.

[27] In proceedings before the FCC, Intelepeer describes itself as follows: "IntelePeer, Inc. is a leading provider of Internet protocol ('IP') communications services to service providers and enterprises and a privately held corporation headquartered in San Mateo, California. IntelePeer is transforming communications by delivering multimodal offerings, including voice and video, across devices, networks and geographies . . . . lntelePeer delivers more than 23 billion minutes annually over . . . sophisticated and intelligent routing software . . . by exchanging traffic with more than 130 other service providers, in addition to between more than 450 million telephone numbers and end point identifying addresses . . . . Our solutions allow wholesale and enterprise customers to transition from legacy telecommunications networks to next-generation, all IP-based communications in a rapid and cost-effective manner." Comments of IntelePeer, Inc., *In the Matter of AT&T Petition to Launch a Proceeding Concerning the TDM-to-IP Transition, et al*., GN Docket No. 12-353 (Jan. 28, 2013).

[28] The website impacttelecom.com states: "Founded as a CLEC in 2005, and headquartered in the Denver Tech Center, Impact Telecom is a leader in the wholesale telecommunications market delivering flexible and effective solutions. Impact owns and operates a state-of-the-art Voice over IP network which carries billions of minutes every year."

[29] According to the website intermetrocomm.net, "InterMetro Communications, Inc. (Ticker: IMTO) is a leading facilities-based provider of enhanced voice and data communication services. We own and operate a national, private, proprietary voice-over Internet Protocol (VoIP) network infrastructure powered by state-of-the-art switching equipment. Our robust network transports carrier-quality enhanced voice services that can be packaged into customized high margin products . . . . InterMetro is headquartered in Simi Valley, California."

[30] According to the website broadvox.com, "Broadvox is a leading nationwide provider of Business Communications. We help businesses of all sizes succeed through cloud-based communications, applications, and high-quality broadband connections. . . . We . . . serve over 300 VoIP and telecommunications carriers as a strategic supplier of VoIP Origination and Termination services."

[31] See ATIS Handbook at 5.1, quoted at NPRM n. 57 ("As the number of providers handling a call increases, there is the potential for lengthier call setup delay and other impairments. Troubleshooting may also prove more difficult. Some carriers have found it useful to limit underlying carriers to including no more than one additional provider, not including the terminating provider"); see also NPRM, ¶ 34.

As indicated in the Iowa complaints, the calls that allegedly fail to complete are commonly intrastate calls. The state therefore has a vital role to play. Indeed, the most effective way to address and solve the problem is for state and federal officials to work in mutually supportive ways within their respective jurisdictions. The state commissions are familiar with the geography, and in many or most cases, the telecommunications players in rural America. They are close to the scene and to many or most of the sources of information. They have a focused interest in seeing the quality of service provided to rural communities in their jurisdictions is preserved and restored and not lost or further degraded. They typically have a focused ability to commit resources to investigating the difficulties and to seeking remedies and enforcement when needed, to the end that the problems do not recur.

In summary, while individual consumers cannot be expected to investigate who is responsible and what happened, if state public utility commission staffs and state consumer advocates are themselves engaged, the state involvement can produce beneficial results. These results can serve as a beneficial complement to the Commission's work. Further, the rural LECs that are, perhaps wrongly, being blamed for the problems, may be a source of valuable information and assistance.

III. IS THIS A PROBLEM JUST FOR CUSTOMERS OF RURAL CARRIERS, OR ALSO FOR RURAL CUSTOMERS OF ALL CARRIERS?

Just as the NPRM lacks detail on whether the call completion failure problem is an interstate issue, an intrastate issue, or a mixture of both,[32] the same uncertainty is found in other areas. Although the NPRM understandably focuses on call completion failures for customers of rural carriers,[33] the question remains open whether the problem is one experienced by rural

[32] And what is the mix? And does it vary state-to-state, region-to-region, or carrier-to-carrier?

[33] Based on the source of many of the reports of the problem, see, e.g., NPRM, ¶ 5.

customers of rural carriers, non-rural carriers, or both.

That is why it is especially important that the Commission's proposed reporting form[34] requires reporting of an aggregate of call attempts and call answers for non-rural carriers. This will not be as valuable as the reporting for **individual** rural carriers,[35] but should — unless the aggregation masks individual problems — give an idea of the relative magnitude of the problem.

The Commission's proposed rules do run the risk, however, of masking two different aspects of the harms to consumers from call completion failures. First, there is the "relativity" issue: Does the Commission's proposed standard — embodied in the "monitoring performance" safe harbor[36] — that accepts an "average call answer rate for all rural carriers to which the provider attempted more than 100 calls in a month … no more than 2 percent less than the average call answer rate for all calls it placed to nonrural carriers…."[37] represent an adequate assurance of "reasonably comparable" service for rural areas, as required by 47 U.S.C. §254?

Perhaps more importantly, it is an open question whether the FCC really has the right approach in proposing rules that concentrate on the **relative** completion rate on calls to rural areas as compared with the completion rate on calls to non-rural areas. If a good part of the problem has to do with compatibility problems, particularly with VoIP networks, and not just carriers' desire to avoid paying termination charges to rural destinations, there might be a danger as we transition to IP networks that completion rates to both rural and non-rural destinations will plummet. NASUCA submits that an absolute standard – such as the traditional 99.999%[38] – for all networks, would be better public policy than a relative one.

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[34] See id., ¶ 20.

[35] Id.

[36] See Section VI., below, at p. 22.

[37] NPRM, ¶ 35.

[38] See http://www.nytimes.com/2011/01/09/business/09digi.html?_r=0.

IV. IS THIS A WIRELINE PROBLEM OR A WIRELESS PROBLEM, OR BOTH?

At first glance at the NPRM, the call completion failure problem appears to be a wireline problem (i.e., for calls initiating from and/or terminating to wireline carriers).[39] The FCC minimizes any problem for calls initiating from or terminating to wireless carriers.[40]

Yet it is important for the FCC to determine whether this is true,[41] or whether this is an "equal opportunity" problem, applying to all modes of service, wireline, wireless, fixed VoIP and nomadic VoIP. A January 2013 NECA presentation to the NASUCA Consumer Protection Committee indicated that, in fact, the wireless incompletion rate is higher than wireline although lower than fixed VoIP and far lower than nomadic VoIP.[42] And if wireless carriers have some ability to prevent the problem, the FCC should use that information. The FCC should determine whether wireless carriers control the routing on calls placed from wireless handsets, or whether that function falls to what NPRM ¶ 25 refers to as the "first facilities-based long distance service provider in the call-completion chain.

V. THE INCREASE IN CALL COMPLETION FAILURE COINCIDES WITH THE RISE OF VOIP AND INVOLVES VOIP PROVIDERS; SOLUTIONS TO CALL COMPLETION FAILURE MUST ADDRESS VOIP PROVIDERS.

It cannot be a coincidence that the call completion failure problem has reared its head in the same timeframe as the increased use of IP transmission. The Commission effectively

[39] See NPRM, ¶ 25.

[40] Id.

[41] Information available from the National Exchange Carrier Association ("NECA") makes it appear that there is indeed a significant problem with calls from wireless carriers to rural companies, although not as severe as the problem with exclusively wireline calls. It is to be hoped that NECA will include this information in its comments.

[42] NECA, "Rural Call Completion Issues Update," ver. NASUCA.1 (2012), Slide 12.

acknowledged this in its previous actions on call completion,[43] and has done so again by including interconnected VoIP providers in the proposed reporting requirements[44] and defining "over-the-top" VoIP providers as facilities-based for the purpose of these proposed rules.[45] Yet the FCC has once again finessed the long-undecided issue of whether VoIP is a telecommunications service.[46]

NASUCA submits that this is a particularly well-suited occasion for the FCC to "confirm the obvious"[47] and make the proper classification of VoIP services as telecommunications services. It is hard to imagine anything more "telecom" in nature than completing a phone call. Further, the Commission's proposed definition of "attempted call" uses the phrase "regardless of technology."[48] As NASUCA and many others have repeatedly urged, the purpose of VoIP is telecommunications; the Commission should finally acknowledge this crucial regulatory fact.

Those arguments have been made recently in NASUCA's reply comments in the FCC's "transition" proceeding, where NASUCA supported NARUC's rebuttal of AT&T's claim that VoIP services are "information services," as quoted here[49]:

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[43] NPRM, ¶ 9.

[44] Id., ¶13. In ¶13, the Commission seeks comment on whether the rules should also apply to one-way VoIP providers. The call blocking rules adopted in the *USF/ICC Transformation Order* apply to one-way VoIP (id., ¶9). There does not appear to be any reason to exclude one-way VoIP from the reporting rules, either. (The application of the blocking rules to VoIP providers was appealed by the VON Coalition, and is one of the myriad issues under consideration in the 10th Circuit.)

[45] Id., ¶17, n.39.

[46] See, e.g. id., ¶19: "To the extent that these proposed rules would apply to VoIP providers, we propose to exercise our ancillary authority **to the extent that VoIP services are information services**, on the ground that such requirements would be necessary for the Commission to carry out its section 201(b) and 202(a) obligations with regard to carriers." (Emphasis added.)

[47] NARUC, as cited below at n. 47.

[48] Id., Appendix A, Proposed Rule § 64.2101(b).

[49] FCC Docket GN 12-353, NASUCA Reply Comments (filed February 27, 2013) at 3-4, citing and quoting id., NARUC Initial Comments ("NARUC Initial Comments") at 10-16.

In AT&T's view, the term "information services" includes fixed VoIP. Yet as NARUC points out, "the AT&T Petition fails to cite to a single case where the FCC concludes that any fee-based VoIP services are in fact 'information services' or any specific text in the Act that would justify preemption of such services."

NARUC offers a comprehensive rebuttal to the claims propping up AT&T's preemption arguments:

> •The FCC has not chosen to classify fixed VoIP as EITHER a telecommunications service OR an information service. (pp. 10-11)
>
> •Without exception, since Computer II, the FCC has always treated all voice service that utilizes the public switched network as common carrier services -- whatever protocols were utilized -- because, as the definitions in the Act specify, the voice communications from the end-user's standpoint undergo no change in the form or content of the information as sent and received. (pp.11-12)
>
> •Congress defined both "telecommunications services" and "information services" in terms of the service offered, not the technology used to provide that service; and the FCC is not free to ignore the express terms of the statute. (pp. 12-16)

[Emphases in original.] NARUC also bolsters the point made in both the NTCA Petition and NASUCA's opening comments, that a shift in network technology does not alter the fundamental nature of the services being provided over the network:

> On a broader level, AT&T also seems to be putting forth a novel construction that a change in the technology used to provide service from TDM to IP somehow converts a carrier's network from providing voice and other telecommunications services, to something else. But the shift to IP technology merely changes the technology for managing the existing network. It no more creates a new category of regulation than did the conversion from electro-mechanical to electronic switches, the introduction of multiplexers (which use packetized data), or the introduction of ISDN and frame relay services, which are also packet technologies. Indeed, significant network upgrades and transitions have occurred every [sic] since phone service was invented. None of these shifts in technology changed the fact that providers were still providing voice and data telecommunications services.

In NARUC's initial comments in the transition docket, NARUC also states that it "has spent the last decade urging the FCC to follow the technology-neutral approach of the Telecommunications Act and confirm the obvious, i.e., that fixed (and nomadic) VoIP services

are, in fact, 'telecommunications services.'"[50] An accompanying footnote cites a still-valid 2003 NARUC resolution indicating the many problems that would beset the public if VoIP were misclassified.

Finally, in NASUCA's initial comments in the inmate calling services docket, we stated,

> The Commission seeks comment "on how and whether use of VoIP technologies by ICS providers impacts our analysis under section 276 of the Act." The best answer to this question, as to so many others, is that the Commission should properly classify interconnected VoIP service as the "telecommunications" service it is. NASUCA will not here repeat its frequent past arguments in support of such a needed classification. We will simply note the perceptive comments of AARP in the IP transition docket, collecting similar comments from others, including Public Knowledge and Free Press, that the Commission is at a policy crossroads, that with the inevitable transition to Internet protocol, and on the opposing view, we are one step away from a world in which not a single American has access to a telecommunications service provider, and where federal telecommunications law applies to "nothing." That could not have been the intent of Congress.[51]

Once again, the best solution is that the Commission properly classify VoIP service as the "telecommunications" service it is. The call completion failure problem is inextricably linked to the IP transition. As indicated above, the investigations in Iowa have revealed a whole chain of underlying carriers with business models dependent on Internet protocols.[52]

Finally, VoIP needs to be classified as a telecommunications service (and, for the protection of consumers, especially needs to be covered by these call completion rules) because there remain numerous technical compatibility problems bridging TDM and VoIP.[53] We used to have an "evergreen" system where the monopoly made sure everything new fit with everything

[50] NARUC Initial Comments at 3.

[51] FCC Docket WC 12-375, NASUCA Initial Comments (filed March 25, 2013) at 11-12. AARP material is from WC Docket No. 12-353, *AT&T Petition to Launch a Proceeding concerning the TCM-to-IP Transition, et al.*, Reply Comments of AARP (Feb. 25, 2013), pp. 7-10 (emphasis in original).

[52] See notes 24-27 above and accompanying text.

[53] These problems appear to be even more substantial than those identified the recent National Regulatory Research Institute papers. See http://www.nrri.org/documents/317330/90b7e015-cfbe-4a16-829f-88643d84b2e1 and http://www.nrri.org/documents/317330/7821a20b-b136-44ee-bee0-8cd5331c7c0b .

old and would work on the system, but now each company has its own ideas, and the result is to some extent chaos.

A particular problem is the "best efforts" Internet protocols, contrasted with the "five nines" (99.999%) standard for call completion that was once the norm.[54] Put bluntly, what is needed and expected for data is not the same as what is needed and expected for voice, especially not when the customer is trying to call an ambulance because her mother is having a heart attack, or trying to reach an out-of-state relative to inform her of the problem after the 9-1-1 call.

VoIP is clearly part of the problem. The NECA presentation to the NASUCA Consumer Protection Committee discussed above noted that "[n]omadic VoIP showed some improvement, but results were still dismal – 30% failure rate, total issues greater than 50%".[55] Thus the Commission must include VoIP (a telecommunications service) in the solution.

VI. DISCUSSION

The 2011 *USF/ICC Transformation Order* and the *2012 Declaratory Ruling* expanded and clarified "the scope of the Commission's prohibition on blocking, choking, reducing, or restricting telephone traffic."[56] These directives, followed up by enforcement against violators, are absolutely necessary. But it might be even more helpful to have an **affirmative** rule, which directs that a long distance company is responsible for completing the call when it uses other carriers. In many ways, this is the central issue. Where call completion failures occur now, the

[54] See NPRM, ¶5.

[55] See note 42, supra (Slide 13).

[56] Id., ¶¶ 9-10.

long-distance companies try to blame someone else.[57] An affirmative rule that squarely places the responsibility for completing calls is needed to avoid this blame-shifting.

The remainder of this portion of NASUCA's comments responds to the requests for comments in specific paragraphs of the NPRM. Failure to address a specific request for comment should not be deemed either agreement or disagreement with the FCC's proposal. NASUCA reserves the right to comment in these areas in reply to other comments.

A. Data Reporting, Record Keeping, and Retention

1. Proposed Reporting, Record Keeping, and Retention Requirements

NPRM, ¶ 21

The Commission "seek[s] comment on our proposed reporting requirements." It appears that the proposed reporting form is focused on "compar[ing] an originating provider's performance in delivering interstate and intrastate long-distance calls to rural local exchanges versus nonrural local exchanges." NASUCA submits that a further disaggregation — between interstate call and intrastate calls — would be helpful in assessing and addressing the call completion failure problem. In addition, the reporting forms apparently do not require the identification of other carriers used when there are call completion failures. That information is a crucial piece of the causal puzzle.

The Commission also asks, "Is the proposed 100 call per month threshold appropriate or, for example, should the threshold be tied to a provider's overall number of call attempts, such as a percentage of overall call attempts?" The use of the 100-call-per-month threshold may be appropriate. On the other hand, carriers that attempt fewer than 100 calls per month may be less focused on service quality for those calls, so it may also be appropriate to require any smaller carrier that falls below a certain threshold of completed calls to also file a report.

[57] In a related vein, see footnote 18 of the Iowa filing cited in footnote 26, above, and accompanying text regarding company "fumbles."

The Commission then asks, "Should all call attempts be included, or just those attempted in some peak period such as between noon and 6:00 p.m. Eastern time?" Certainly at this phase of addressing the call completion failure problem, all call attempts must be included. At some point, it may be appropriate to delve deeper into the problem, by requiring reports — especially from carriers with high levels of call failures — that break things down into daily timeframes and/or separate weekend from weekday calling.

The Commission asks,

> Are the proposed monthly measurement and quarterly reporting intervals appropriate? For example, is the nature of chronic call routing failures such that measurement data analyzed monthly masks problems that a weekly measurement would capture? If the Commission adopts quarterly reporting requirements, on what dates should they be filed?

Again, in this phase, monthly reporting should be adequate. Weekly reporting should not be necessary, although such a short interval would be appropriate for a carrier "under suspicion." On the other hand, quarterly reporting would be insufficiently granular.

Importantly, the Commission "seek[s] comment on the benefits and burdens associated with our proposed reporting requirements." NASUCA cannot emphasize enough that the benefit almost goes without saying: Reporting is a step toward solving the documented call completion failure problem, with its documented harms to consumers. We will address burdens on reply, in response to carriers that attempt either to minimize the problem or to exaggerate the costs of solving the problem.

Finally, and crucially, the Commission "seek[s] comment on whether the information that will be provided should be treated as confidential or be open to public inspection." Here again, NASUCA cannot emphasize enough that the information that is filed should be open to public inspection. The sunshine should be brightest in this area where the public need and the public harm is so clear.

It appears that some carriers are reluctant to disclose pertinent and essential information, such as the identities of the underlying carriers that are involved in the call completion failures. As illustrated above, the complaint processes in Iowa are bringing that information to light. Clearly, the identity of the carriers that have participated in a call that failed to be completed is crucial, and should be public.

NPRM, ¶ 23

The Commission "seek[s] comment on our proposed record-keeping and record-retention requirements." In the first place, NASUCA questions whether the proposed six-month record retention requirement is sufficient; this proposed requirement assumes that there will be prompt investigation, which is a big assumption. One year may be more appropriate; NASUCA will be interested in hearing carriers' claims of the burdens of a six-month requirement.

As discussed above,[58] the interstate/intrastate distinction is crucial for resolution of this problem. It is possible that the Commission's requirement that interstate calls be identified means that the residual calls are intrastate, but some assurance on this issue would be appropriate.

NASUCA submits that —in contrast to our general view that records should be public, the calling and called party numbers retained by carriers should not be considered public records. Although these records should be accessible by state regulators and consumer advocates for investigative purposes, the information should not be more broadly accessible, given customers' reasonable expectations of privacy.

The Commission also

> seek[s] comment generally on the long-distance records and data that originating providers currently collect in the normal course of business, and to what extent they already (1) capture and (2) retain the information proposed. For example, do

[58] See Section II.

originating providers typically retain the information we propose to be retained on each call attempt, including on failed attempts?

NASUCA expects to address this issue on reply. It appears that carriers do not always capture or retain information regarding calls that fail to complete. Because such information is needed in order to investigate and solve the problems, NASUCA supports requiring carriers to capture and retain such information.

The Commission then "seek[s] comment on the benefits and burdens associated with collecting and retaining information as described above that is additional to currently collected information. " As above, the benefit of collecting and retaining this information is helping to solve the call completion failure problem. And again, we will address burdens on reply, in response to carriers that attempt either to minimize the problem or to exaggerate the costs of solving the problem.

Finally, the Commission "seek[s] comment on whether recording and retaining a statistically valid sample of data could fulfill the purposes of data retention and provide the basis for the required reporting while being less burdensome." It would not necessarily be less burdensome to record and retain a statistical sample (and to do the statistical analysis) than to record and retain all the records (without doing such analysis). It should also be the investigators (federal, state, and consumer advocates) who do the statistical analysis. And the Commission has a valid point in questioning whether "a statistical sample [would] support enforcement action in connection with a provider's call-completion practices." Certainly this would at the least give rise to unnecessary disputes.

NPRM, ¶ 24

The Commission "propose[s] to adopt a rule requiring that if the originating provider is not facilities based, the record-keeping, retention, and reporting requirements proposed in this Notice would apply to the first facilities-based provider that is involved in handling the call."

This seems reasonable, except how does the proposed aggregation allow identification of problems for an individual up-stream non-facilities-based ("NFB") provider?

The Commission asks, "Does limiting these proposed requirements to facilities-based providers ensure that the rules apply to the entity with the most direct access to call records, thus minimizing the burden of compliance?" It seems likely that reports would only be needed from NFB providers if a problem appeared in the FB providers' reports. Thus the Commission's rules should include that eventuality.

NASUCA would expect to address the benefits and burdens of this proposal on reply.

NPRM, ¶ 25

NASUCA submits that the Commission inclusion of "the following source-termination 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)" seems reasonable. As an initial matter, however, "calls to CMRS subscribers" should also be included. Exclusion because such calls "do not normally incur high termination access charges on termination in rural areas" assumes that access charges are a (if not the) main cause of call completion failures, which has not been shown. And there may be other reasons why such calls "have not been the subject of the same types of complaints as calls to rural telephone companies."

NPRM, ¶ 26

NASUCA opposes the exclusion of calls to non-rural CLECs, at least initially (especially do to the lack of expressed rationale). On the other hand, the exclusion of auto-dialers that are programmed for quick hang-ups[59] would not appear to cause a problem, but exclusion of

[59] NPRM, ¶ 26, n.50.

emergency auto-dialers[60] should not be countenanced.[61] If these two types of calls cannot be differentiated, then NASUCA submits that the error should be on the side of inclusion.

NPRM, ¶¶ 27-30

NASUCA generally supports the proposals in these paragraphs, except those in ¶ 30 involving exclusion of calls to toll-free numbers and calls of short duration. As to toll-free calls, both the callers and the called parties have a reasonable expectation that the calls will be completed. It is inappropriate to categorically assume that neither party on a very short call has such an expectation.

NASUCA would also note with regard to ¶ 28 that perhaps the number of such "hand-backs" should be recorded, because the initial attempt would have been a failure absent the hand-back, and the carriers responsible for such potential failures should be identified.

2. Proposed Limitations on Application of Reporting and Retention Rules

NPRM, ¶ 31

In this paragraph, the Commission proposes "to lessen the burden of compliance with these proposed rules [by] requir[ing] only those originating long-distance providers and other covered providers with more than 100,000 retail long-distance subscribers (business or residential) to retain the basic information on call attempts and to periodically report the summary analysis of that information to the Commission." The Commission asks, "Would the exclusion of smaller providers compromise the Commission's ability to monitor rural call completion problems effectively?" NASUCA's response is, of course such a limit would compromise the Commission's effective monitoring! More importantly, the proposal would

[60] Id., n.51.

[61] It would appear that most such calls would be intrastate.

compromise the ability of the **customers** of these "smaller" carriers to receive quality service. Thus this limitation should not be adopted.

NPRM, 32

As discussed below, NASUCA opposes adoption of the "Managing Intermediate Provider Safe Harbor" and has only limited support for the Monitoring Performance Safe Harbor. But if either safe harbor is adopted, it is crucial that the Commission "delegate to the Wireline Competition Bureau authority to revoke a provider's eligibility for these safe harbors if the Commission receives a certain number of complaints about that provider's call-completion performance."

NPRM, ¶¶ 33-34

The Commission's first safe harbor, which allows the carrier to forgo call completion reporting, requires that

> a provider must certify on an annual basis that it restricts 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. The provider must further certify that any nondisclosure agreement with an intermediate provider permits the originating provider to reveal the identity of the intermediate provider to the Commission and to the rural carrier(s) whose incoming long-distance calls are affected by the intermediate provider's performance. Finally, the provider must certify that it has a process in place to monitor the performance of its intermediate providers in completing calls to individual rural telephone companies as identified by Operating Carrier Number.

Although this safe harbor may be well-intentioned, a carrier's limiting the number of intermediate providers, disclosing the identify of that intermediate provider to the Commission and to affected rural carriers and, most importantly, having a process in place to *monitor* the intermediate provider's performance, provides no assurance for customers that the monitoring **will actually result in action against a provider's sub-par performance**. Even if such action is required, whether it be imposing a penalty on the sub-par provider, or cancelling the provider's contract, there is the risk that the carrier will weigh its economic convenience against the

interests of its customers and take no effective action. That is why state and federal regulators — with their focus on the **public** interest — need to be making these judgments.

This proposed safe harbor, if adopted, might also unwittingly place a Commission imprimatur on non-disclosure agreements between carriers that seek to hide from the adversely affected public the identity of the carriers who are causing the problems. It is not clear why the identity of the underlying carriers or "least cost routers" would be proprietary. Yet with isolated exceptions, it appears that no one outside the industry has until recently known even who these carriers are. That is itself a large piece of the problem. Secrecy "conceals any patterns of illegal or abusive practices" and works contrary to the policy "that justice should be administered openly and publicly."[62] When calls fail to complete, proceedings before state public utility commissions, for example, are properly conducted in public, unless and to the extent they involve *legitimately* confidential information. If the goal is to solve the problem, and it is, there needs to be public knowledge about who these carriers of public voice traffic are.

The bottom line is that this safe harbor makes no sense in terms of solving the serious and widespread problem at issue here. It should not be adopted.

NPRM, ¶¶ 35-36

This Monitoring Performance Safe Harbor requires that

> a provider must certify on an annual basis that for each of the previous 12 months, it has met the following performance standard: the average call answer rate for all rural carriers to which the provider attempted more than 100 calls in a month was no more than 2 percent less than the average call answer rate for all calls it placed to nonrural carriers in the same month, and the call answer rates for 95 percent of those rural carriers to which the provider attempted more than 100 calls were no more than 3 percent below the average rural call answer rate. Finally, the provider must certify that it has a process in place to investigate its performance in completing calls to individual rural telephone companies (as identified by Operating Carrier Number) for which the call answer rate is more than 3 percent below the average of the rural call answer rate for all rural telephone companies to which it attempted more than 100 calls. Providers that certify compliance with

[62] *McKee v. AT&T, Corp.* 191 P.3d 845, 858 (Wash. 2008).

> this safe harbor would be relieved of any quarterly reporting obligation and would be required to retain call attempt data in readily retrievable form for a reduced period of three months.

To begin, the concept of a performance standard that allows carriers to forgo reporting is a reasonable one. Yet as the Commission recognizes, the crucial issue is, "Are these proposed thresholds reasonable and appropriate?" NASUCA submits that the thresholds are not reasonable and appropriate, **because they accept that a differential in call completion between calls to rural carriers and calls to nonrural carriers is reasonable and appropriate.** There is no rationale expressed in the NPRM, and there does not appear to be any reasonable rationale, that would justify such a differential.[63] Although 47 U.S.C. § 254 establishes only a comparability service standard between rural and nonrural customers, it is a "reasonable" comparability standard. This means that there must be a rational basis for the difference.[64]

There is another problem with using such a relative standard: It presumes that the current level of call completion to customers of nonrural carriers is acceptable, and will remain so in the future. Especially with the transition to "best efforts" IP transmission, this is far from certain. It appears that an absolute, rather than a relative, standard would best serve consumers.

NASUCA reserves responses to the Commission's other questions on this safe harbor for reply comments, based on other parties' initial comments..

3. Duration of Proposed Reporting and Retention Rules

NPRM, ¶¶ 37-38

The Commission "seek[s] comment … on whether the rules we propose today should expire at the end of the intercarrier compensation reform transition period or some other point."

[63] The existence of higher ICC charges from many rural carriers cannot justify the failure of carriers to complete calls to those carriers. Such blocking clearly violates Commission policy and the law. See NPRM, ¶¶ 9-10.

[64] Such as higher costs of service in rural areas justifying higher — but still reasonably comparable" — rates for the service in those areas.

NASUCA submits — as strongly as possible — that these rules should expire only if the call completion failure problem is solved **and can be assured not to recur.**

The Commission's assumption that the rules could sunset "at the end of the intercarrier compensation reform transition period" assumes that the adoption of a bill-and-keep ICC mechanism in fact "address[es] the root causes of many rural call completion problems." As discussed above, that assumption is not necessarily correct. Thus a sunset based on such a shaky assumption cannot be formalized.

Commissioner Pai's Concurring Statement indicates his expectation that "[a]lthough the Notice proposes to sunset the data collection about eight years from now, I hope we can do so much sooner. Rural call completion should not be a live issue eight years from now. We must resolve it much, much sooner." NASUCA wholeheartedly supports this sentiment, and wishes Commissioner Pai's expectation would be fulfilled. But based on past experience with telecommunications networks,[65] NASUCA recognizes that the problem may still exist eight years from (or even later). Thus any sunset of these rules must be based on actual experience, where customers' expectations that their calls to other customers are in fact met. Thus NASUCA opposes the adoption of any specific sunset date in these rules.

B. Proposed Ring Signaling Integrity Requirements

NPRM, ¶¶ 39-43

The Commission proposes a rule to

> prohibit both originating providers 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. Originating providers and intermediate providers must also convey audio tones and announcements sent by the terminating provider to the calling party.

[65] And information networks as well.

As the Commission notes, "This proposal would codify a widely accepted industry practice that has in the past proven effective."

NASUCA strongly supports the adoption of such a rule. We would note, however, that "[t]he decision by some providers to deviate from traditional industry practice" is not likely to harm just consumers in rural areas; the harm could just as well fall on customers in non-rural areas, in the absence of an industry-wide rule.

VII. CONCLUSION

NASUCA again expresses gratitude at this opportunity to comment on this issue of direct and grave concern to America's telecommunications consumers. NASUCA urges the Commission to take prompt and decisive action consistent with these comments.

Respectfully submitted,

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