



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

WC Docket No. 13-39; FCC 18-45

Rural Call Completion

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, we seek comment on rules to implement the recently enacted Improving Rural Call Quality and Reliability Act (“RCC Act”), which directs us to establish registration requirements and service quality standards for “intermediate providers”—entities that transmit calls without serving as the originating or terminating provider. By giving us clear authority to shine a light on intermediate providers and hold them accountable for their performance, the RCC Act provides an important additional tool we can use in our work to promote call completion to all Americans. We anticipate that the rules we will adopt to implement the RCC Act’s direction to regulate intermediate providers will complement our covered provider monitoring rule by ensuring that the participants in the call path share in the responsibility to ensure that calls to rural areas are completed. We also seek comment on sunsetting the recording and retention rules established in the 2013 *RCC Order* upon implementation of the RCC Act.

DATES: Comments are due on or before **June 4, 2018**, and reply comments are due on or before **June 19, 2018**. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and

Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by WC Docket No. 13-39, by any of the following methods:

- Federal Communications Commission's Web Site: <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- Mail: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to

fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Wireline Competition Bureau, Competition Policy Division, Zach Ross, at (202) 418-1033, or zachary.ross@fcc.gov. For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to PRA@fcc.gov or contact Nicole Ongele at (202) 418-2991.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Further Notice of Proposed Rulemaking (*FNPRM*) in WC Docket No. 13-39, adopted and released on April 17, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. It is available on the Commission's Web site at <https://www.fcc.gov/document/fcc-takes-new-steps-improve-rural-call-completion-0>.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998), <http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf>.

- **Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- **Paper Filers:** Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
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I. SYNOPSIS:

A. Certain Intermediate Providers Must Register with the Commission

1. We propose and seek comment on rules to implement the registry provisions of the RCC Act. New section 262(c) of the Act mandates that, when promulgating registry rules, the Commission “(A) ensure the integrity of the transmission of covered voice communications to all customers in the United States; and (B) prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications.” The RCC Act also requires the Commission to make the intermediate provider registry publicly available on the Commission’s website. The statute does not otherwise specify requirements for the registry or the registration rules to be imposed on intermediate providers.

2. We propose to implement new section 262(a)(1) by requiring that any intermediate provider register with the Commission if that provider offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and charges any rate to any other entity (including an affiliated entity) for the transmission.

3. We propose that this registration be filed via a portal on the Commission’s website, be made publicly available on that website, and include the following information: (1) the intermediate provider’s business name(s) and primary address; (2) the name(s), telephone number(s), email address(es), and business address(es) of the intermediate provider’s regulatory contact and/or designated agent for service of process; (3) all business names that the intermediate provider has used in the past; (4) the state(s) in which the intermediate provider provides service; and (5) the name, title, business address, telephone number, and email address of at least one person as well as the department within the company responsible for addressing rural call completion issues. We seek comment on this proposal and on any other types of

information that intermediate providers should be required to include in their registrations.

4. The first four categories of information listed above are similar to those required under the Commission's existing registration requirement for telecommunications carriers and interconnected VoIP providers, and we believe that they are appropriate for inclusion here. We also propose that intermediate provider registrations specifically include a point-of-contact for addressing rural call completion issues in light of record evidence that access to such information would help facilitate communication and cooperation among service providers to efficiently resolve rural call completion issues as expeditiously as possible. We believe collection and publication of the foregoing information will not constitute a significant burden for affected providers, and will facilitate compliance by creating a publicly-available database of registered intermediate providers, along with the relevant contact information for each provider. We seek comment on this view. Consistent with our existing registration requirements, we also propose to require intermediate providers to update their registration information within one week of any change. We seek comment on this proposal and any alternatives thereto. We also seek comment on the benefits and burdens (including specific costs) of the proposed registration requirements, especially regarding small intermediate providers, and whether any accommodations for small providers are necessary.

5. Finally, we propose to adopt a 30-day registration deadline for intermediate providers. The registration period would commence upon approval by the Office of Management and Budget of the final rules establishing the registry. We note that our filing instructions for Form 499-A indicate that new filers, including telecommunications carriers and interconnected VoIP providers, are to register with the Commission "[u]pon beginning to provide service, but no later than 30 days after beginning to provide service." Consistent with

this requirement, we seek comment on whether a 30-day registration period would be appropriate for intermediate providers subject to our registration rules. We seek comment on this proposal, and on any alternative timeframes for requiring intermediate providers to register with the Commission.

6. We believe that our proposals, including making the registrations publicly available on the Commission’s website, are consistent with Congress’ intent to “increase the reliability of intermediate providers by bringing transparency” to the intermediate provider market. We also believe that the proposals, including the requirement to provide point-of-contact information for rural call completion complaints and to make such information publicly available, are consistent with Congress’ mandate that our implementing rules ensure the integrity of the transmission of covered voice communications to all customers in the country and prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications. In making this proposal, we clarify that our proposed registration requirements are not intended to alter our current processes for handling rural call completion complaints submitted by rural carriers or consumers. At the same time, we believe that requiring the submission of this information would be minimally burdensome on intermediate providers. We seek comment on this preliminary analysis.

7. We also seek comment on any alternative proposals for structuring and managing the intermediate provider registry. In addition, we specifically seek comment on the benefits and burdens to smaller providers of our proposals and any potential alternatives.

8. *Intermediate Providers That Must Register.* New section 262(a) of the Act imposes registration and service quality requirements only on any intermediate provider “that offers or holds itself out as offering the capability to transmit covered voice communications

from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission.” We therefore propose to apply the registration and service quality requirements we adopt to any intermediate provider so long as it fits within the criteria established by section 262(a). We seek comment on this proposal, on any potential alternatives, and on any other guidance we should provide in implementing section 262(a).

9. We seek comment on the difference between the universe of intermediate providers as defined in section 262(i)(3) and the universe of intermediate providers encompassed by section 262(a). Section 262(i)(3) offers a general definition of intermediate providers. Section 262(a) appears to limit its application to intermediate providers, as defined in 262(i)(3), that meet additional limiting factors. One of these factors is that section 262(a) applies only to intermediate providers that charge a rate to other entities, including their affiliates, for transmitting covered voice communications. Are there any other differences between the intermediate providers encompassed by sections 262(i)(3) and 262(a)? Does the phrase “that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another” narrow the scope of intermediate providers captured by section 262(a) compared to section 262(i)(3)? We seek comment on this issue and any others that commenters believe are relevant in interpreting and implementing section 262(a).

10. With respect to the scope of intermediate providers subject to the registration requirements in particular, we note that section 262(b) states that “[a] covered provider may not use an intermediate provider to transmit covered voice communications unless such intermediate provider is registered under subsection (a)(1).” We believe that this provision is best understood to mean that intermediate providers “that offer[] or hold[] [themselves] out as offering the capability to transmit covered voice communications from one destination to another and that

charge[] any rate to any other entity (including an affiliate) for the transmission” must register with the Commission under section 262(a)(1), and that any intermediate provider that seeks to be used by a covered provider must also register with the Commission. We seek comment on this view and on any alternative readings that give meaning to the text of both sections 262(b) and 262(a)(1).

B. Covered Providers May Not Use Unregistered Intermediate Providers

11. We seek comment on how to interpret and implement the prohibition on covered providers’ use of unregistered intermediate providers in section 262(b). In particular, we seek comment on the definition of “use” in section 262(b). We propose that the word “use” in this context be understood to mean that a covered provider may not rely on any unregistered intermediate providers in the path of a given call. In making this proposal, we note that the definition of “intermediate provider” contained in section 262(i) broadly refers to providers at all points in the call chain, excluding covered providers who originate or terminate a given call, and that section 262(a) requires any of these entities that offer to transmit covered voice communications for a rate to register with the Commission and meet our quality of service standards. We seek comment on this proposal. Alternatively, should “use” be interpreted to mean that the covered provider must ensure only that the first intermediate provider in the call path is registered? Are there other possible interpretations of section 262(b)? For each potential interpretation, we seek comment on the costs and benefits (including to smaller providers), implementation issues, and the extent to which the interpretation reflects Congress’ intent.

12. We note that the relevant Senate Commerce Committee Report states that it is “not the intent of the Committee that this definition be interpreted to cover entities that only incidentally transmit voice traffic, like Internet Service Providers alongside other packet data,

without a specific business arrangement to carry, route, or transmit that voice traffic.” Should we supplement our proposed definition of “intermediate provider” to reflect this intent, and if so, how? For example, should certain types of entities be exempt from the definition of “intermediate provider”?

13. We further propose that covered providers must be responsible for knowing the identity of all intermediate providers in a call path, and we seek comment on this proposal. We believe this proposed requirement appropriately builds on and flows from our proposed interpretation of “use” in the RCC Act. The ATIS RCC Handbook states that if “[service providers] are aware of which downstream [service providers] are involved in handling their traffic, they can perform due diligence and possibly better manage call completion issues.” Moreover, given the section 217 liability we described above (and related monitoring rule obligation we impose on covered providers to be responsible for the entire intermediate provider chain), we believe that allowing covered providers to not know the identities of their intermediates amounts to allowing willful ignorance: i.e., it would allow covered providers to circumvent their duties by employing unknown or anonymous intermediate providers in a call path. We seek comment on this proposal and analysis. If we adopt our proposed definition of “use,” how could covered providers comply with the RCC Act and not possess this information? We also seek comment on HD Tandem’s assertion that “[t]he possibility of unlimited and unknown intermediate carriers in the call path makes it nearly impossible, as a practical matter, to enforce the Commission’s RCC rules.”

14. We further propose to require covered providers to maintain, and furnish upon request to the Commission or state authorities as appropriate, the identities of any or all intermediate providers in their respective call paths. We seek comment on this proposal and on

any alternative approaches, particularly as they relate to the RCC Act. We believe that making this information available upon request to the Commission and state authorities would facilitate our and state authorities' understanding of rural call completion issues and how to combat them. We further believe that this approach will help maximize the value of the registry for promoting rural call completion, and ensure compliance with section 262(b). We seek comment on this analysis.

15. We also seek comment generally on how best to enforce the requirements of section 262(b). For example, should we require covered providers to use the intermediate provider registry that we establish to confirm the registration of a potential intermediate provider before purchasing service from that provider? Further, we seek comment on whether we should adopt any exceptions to the prohibition on using unregistered intermediate providers and whether any such exceptions would be consistent with the RCC Act. What should the consequences be if a covered provider uses an unregistered intermediate provider? If an intermediate provider loses its registration, how long should a covered provider have to remove that intermediate provider from its route table? What if that newly deregistered intermediate provider is the only provider to the target rural carrier? As part of this inquiry, we seek comment on the best approach to adopting any exceptions, including as to whether we should adopt express exceptions to our rules, or delineate circumstances under which affected entities could seek a waiver from the Commission.

16. Once we have adopted rules to implement the RCC Act registration requirement, how long should covered providers have to ensure that they comply with the requirement to use only registered intermediate providers? As discussed above, we propose to adopt a 30-day registration deadline for intermediate providers. Should covered providers have an additional 30

days—after the 30-day registration deadline for intermediate providers—in which to ensure that they comply with the requirement to use only registered intermediate providers? Is that an adequate period of time for covered providers to make any contractual and/or traffic routing adjustments needed to comply with the RCC Act and the Commission’s implementing regulations? If not, what would be an appropriate period of time?

C. Service Quality Standards for Intermediate Providers

17. The RCC Act also requires intermediate providers that offer, or hold themselves out as offering, the capability to transmit covered voice communications from one destination to another and that charge any rate to any other entity (including an affiliated entity) to comply with “service quality standards” to be established by the Commission. Under new section 262(d) of the Act, in promulgating such standards, the Commission must “ensure the integrity of the transmission of covered voice communications to all customers in the United States” and “prevent unjust or unreasonable discrimination among areas of the United States in the delivery of covered voice communications.” While the RCC Act does not define the term “service quality standards,” the Senate Commerce Committee Report states that such standards “could include the adoption of specific call completion metrics or the more general adoption of duties to complete calls analogous to those that already apply to covered providers under prior Commission rules and orders.”

18. We seek comment generally on possible frameworks to implement the service quality standards provisions of the RCC Act. We seek to establish service quality standards for intermediate providers that will ensure rural call completion but that are also minimally burdensome, and we seek comment on how best to do so. We believe that proposals that rely on or are consistent with industry best practices to develop service quality standards will be less

burdensome on intermediate providers than other potential approaches, and we seek comment on this view. For each of the proposals below and each potential alternative proposed by commenters, we seek comment on its effectiveness in ensuring call completion to rural areas (including its effectiveness relative to other proposals), its costs and benefits, and its impact on smaller intermediate providers.

1. Proposed Service Quality Standards

19. *Industry Best Practices.* First, we propose to require intermediate providers subject to section 262(a) to take reasonable steps to abide by certain industry best practices for rural call completion. Specifically, we propose to require intermediate providers to take reasonable steps to: (1) prevent “call looping,” a practice in which the intermediate provider hands off a call for completion to a provider that has previously handed off the call; (2) “crank back” or release a call back to the originating carrier, rather than simply dropping the call, upon failure to find a route; and (3) not process calls so as to “terminate and re-originate” them (e.g., fraudulently using “SIM boxes” or unlimited VoIP plans to re-originate large amounts of traffic in an attempt to shift the cost of terminating these calls from the originating provider to the wireless or wireline provider). These best practices, developed by ATIS, are supported by both covered providers and rural carriers. We seek comment on our proposal, and how these rules should be drafted, including the specific language and terminology that should be used.

20. We also recognize that another industry best practice for rural call completion is to prohibit intermediate providers from manipulating signaling information. Section 64.1601(a)(2) of the Commission’s rules already requires intermediate providers within an interstate or intrastate call path that originate and/or terminate on the PSTN to pass unaltered to subsequent providers in the call path signaling information identifying the telephone number, or

billing number, if different, of the calling party that is received with a call. In addition, section 64.2201(b) requires intermediate providers to 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. Are any additional rules necessary to prevent intermediate providers from manipulating signaling information for calls destined for rural areas? If we adopt an annual certification requirement, should we require intermediate providers to certify compliance with these rules in their annual certifications?

21. Are these best practices sufficient? Should we require intermediate providers to take reasonable steps to follow any other industry best practices, either in addition to or in place of those discussed above? Should we require intermediate providers to temporarily or permanently remove an intermediate provider who fails to perform at an acceptable service level from the routing path, as we required for covered providers? Although we declined to mandate this approach for covered providers, should we require intermediate providers to take reasonable steps to limit the number of intermediate providers after them in the call chain? How can we ensure that our rules keep pace if ATIS rural call completion best practices or other industry-based standard is modified? What are the costs, benefits, and implications of these requirements on covered providers, intermediate providers, and consumers? Are there other implementation issues associated with these best practices that we should consider? We seek comment on the approach we propose generally, including on how we should define “reasonable steps.” We also seek comment on alternatives to this proposal, such as omitting the language “take reasonable steps to” from the draft rule.

22. *Self-Monitoring of Rural Call Completion Performance.* Second, in addition to the proposed requirement to comply with industry best practices, we propose requiring

intermediate providers to have processes in place to monitor their own rural call completion performance when transmitting covered voice communications. We seek comment on whether we should model this self-monitoring rule on the monitoring rule for covered providers. In what ways, if any, should the two requirements vary? Should the self-monitoring rule for intermediate providers be more prescriptive than the monitoring rule for covered providers we adopt, and if so why and how? How can we ensure that the combined monitoring requirements work harmoniously to best promote rural call completion while avoiding wasteful duplicative effort? For instance, should we allow a safe harbor for covered providers who work with an intermediate provider that meets our intermediate provider monitoring requirements and reports back or certifies its compliance to the covered provider?

23. If commenters believe the intermediate provider self-monitoring requirement and covered provider monitoring rule should differ, we seek comment on how they should differ. Should we specify the form and frequency of the required monitoring, and if so, how? Should we clarify the scope of the required monitoring by intermediate providers, and if so how? For example, should we clarify whether the monitoring must be conducted on a rural OCN-by-OCN basis? Should we specify how intermediate providers must monitor and assess their own rural call completion performance or should we leave this to the discretion of intermediate providers? We also seek comment on any other potential implementation issues associated with the proposed self-monitoring requirement. Additionally, we seek comment on the benefits and burdens of this proposal with regard to small intermediate providers.

24. *Compliance.* Further, we seek comment on how we can best ensure compliance with our proposed requirements. While we rejected requiring covered providers to file an annual certification of compliance with the monitoring rule, should we nonetheless require intermediate

providers to file annual certifications that they are taking reasonable steps to follow the specified best practices? If so, how should such a requirement be implemented?

2. Alternative Proposals

25. We seek comment on alternative proposals for service quality standards. If we were to pursue “the more general adoption of duties to complete calls analogous to those that already apply to covered providers under prior Commission rules and orders,” with which basic practices should we require intermediate providers to comply? For instance, should we explicitly prohibit intermediate providers from blocking or restricting calls to rural areas? We seek comment on such a requirement, including whether any exceptions would need to be permitted.

26. Alternatively, should we require intermediate providers to meet or exceed one or more numeric rural call completion performance targets or thresholds while giving them flexibility in how to meet this requirement? If so, what metric(s) should we utilize and what target(s) or threshold(s) should we set? How would we address the data quality issues we have previously seen in our reports in creating and enforcing such a metric?

27. Finally, we seek comment on whether we should require intermediate providers to certify that they do not transmit covered voice communications to other intermediate providers that are not registered with the Commission and on any implementation issues associated with such a requirement. Is such a requirement necessary given that new section 262(b) prohibits covered providers from using intermediate providers that are unregistered?

3. Impact of Covered Provider Requirements on Quality Standards

28. For each of the proposals above and any potential alternative, we also seek comment on its relationship to the requirements for covered providers we adopt in today’s

Order. In particular, how should the quality standards we adopt for intermediate providers be influenced by the monitoring rule we establish for on covered providers, if at all? Does the fact that we adopted a flexible, standard-based approach for covered providers suggest that we should do the same for intermediate providers? Or does it encourage us to adopt specific measures for intermediate provider quality standards, so that covered providers can refer to intermediate provider compliance when working to fulfill the monitoring rule? We seek comment on these and any other issues regarding the interplay between our proposed service quality standards and the covered provider requirements adopted in today's *Order*.

D. Enforcement of Intermediate Provider Requirements

29. We seek comment on how to enforce the registration and service quality requirements that we adopt for intermediate providers. Should an intermediate provider's failure to comply with the quality standards we adopt or to fully and accurately register potentially result in removal from the registry, thereby preventing covered providers from using that intermediate provider? We seek comment on this issue and any related implementation issues. For example, how long should removal from the registry last? And what process should we establish for permitting an intermediate provider that has been removed from the registry for noncompliance to be reinstated?

30. For the Commission to exercise its forfeiture authority for violations of the Act and the Commission's rules without first issuing a citation, the wrongdoer must hold (or be an applicant for) some form of authorization from the Commission, or be engaged in activity for which such an authorization is required. Intermediate providers are not currently required to obtain a Commission authorization (although some intermediate providers may hold Commission authorizations as a result of other services that they provide). We propose to

interpret the act of registration itself as a grant of Commission authorization to intermediate providers and allow us to exercise our forfeiture authority against registered providers without first issuing a citation. We seek comment on this proposal. Does this proposal allow us to take appropriate enforcement action against providers that violate the intermediate provider requirements that we adopt? Are there drawbacks to this proposal, or practical implementation issues we should consider? Is there an alternate mechanism to gain enforcement authority over intermediate providers that we should adopt?

31. In addition, to the extent that any intermediate providers are not common carriers, we seek comment on appropriate penalties and enforcement processes for violations of the RCC Act. Presently, common carriers may be assessed a forfeiture of up to \$196,387 per violation or each day of a continuing violation and up to a statutory maximum of \$1,963,870 for any single act or failure to act. These amounts reflect inflation adjustments to the forfeitures specified in section 503(b)(2)(B) of the Act (\$100,000 per violation or per day of a continuing violation and \$1,000,000 per any single act or failure to act). The Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (2015 Inflation Adjustment Act) requires the Commission to amend its forfeiture penalty rules to reflect annual adjustments for inflation in order to improve their effectiveness and maintain their deterrent effect. Further, the 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, including when the violations associated with the penalties predate the increase. In contrast, non-common carrier entities that hold Commission authorizations, but are not specifically designated in section 503(b)(2)(A) through (C) of the Act, are subject to a forfeiture of up to \$19,639 per violation or each day of a continuing violation and up to a statutory maximum of \$147,290 for any single act or failure to act. These penalties also apply to an entity

that does not hold (and is not required to hold) a Commission license, permit, certificate, or other instrument of authorization, but, as explained above, is subject to forfeiture after a citation has first been issued. Under our proposal, we could impose forfeitures on intermediate providers registered with us without first issuing a citation. In such cases, which penalty is the more appropriate maximum forfeiture for intermediate providers that are not otherwise considered common carriers? If commenters believe that such entities should be subject to the same potential penalties as common carriers, what legal authority do we have for that approach? Commenters advocating for a given approach should discuss in detail the legal analysis and/or any relevant precedent that they believe could justify such action. Are there other bases for imposing on any intermediate providers that are not common carriers equivalent enforcement provisions as those imposed on traditional common carriers in the rural call completion context?

32. Should intermediate providers be prohibited from registering with the Commission if they are “red-lighted” by the Commission for unpaid debts or other reasons? And how can we prevent individuals from circumventing registration prohibitions by forming and registering new intermediate provider entities? Are there other reasons for which intermediate providers should be deemed ineligible to register? We seek comment on these and any alternative approaches that commenters believe would put any intermediate providers that are not common carriers on an equal footing with intermediate providers that are common carriers.

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

33. The RCC Act creates an exception to the intermediate provider service quality standards to be established by the Commission for those intermediate providers that are also safe harbor covered providers. In order to qualify for the Safe Harbor, covered providers satisfy three qualification requirements: (1) the covered provider must restrict by contract any intermediate

provider to which a call is directed from permitting more than one additional intermediate provider in the call path before the call reaches the terminating provider or terminating tandem; (2) any nondisclosure agreement with an intermediate provider must permit the covered provider to reveal the identity of the intermediate provider and any additional intermediate provider to the Commission and to the rural incumbent LEC(s) whose incoming long-distance calls are affected by the intermediate provider's performance; and (3) the covered provider must have a process in place to monitor the performance of its intermediate providers. Specifically, new section 262(h) provides that the service quality standards "shall not apply to a covered provider that—(1) on or before the date that is 1 year after the date of enactment of this section, has certified as a safe harbor provider under section 64.2107(a) . . . or any successor regulation; and (2) continues to meet the requirements under such section 64.2107(a)." Therefore, to implement new section 262(h), we propose to retain the three qualification requirements of our existing safe harbor rule. That is, a covered provider seeking to qualify for the safe harbor within the timeframe specified under the legislation would need to meet the existing qualification requirements in section 64.2107(a) of our rules. We seek comment on this proposal.

34. We also seek comment on the interaction between the exemptions contained in the RCC Act and our removal of the RCC data reporting requirements. In this connection, we seek comment on how phasing out the remaining recording and retention requirements, if we were to adopt that approach, could affect the safe harbor provisions of section 64.2107(a), and by extension, our implementation of section 262(h). If we were to eliminate the recording and retention requirements from which the safe harbor provides partial relief, will safe harbor covered providers have sufficient incentive to continue to use no more than two intermediate providers in the path of a given call? Stated differently, will relief from the intermediate

provider service quality standards pursuant to section 262(h) provide adequate incentive for current safe harbor covered providers to continue utilizing no more than two intermediate providers in the call path in an effort to reduce rural call completion problems? Do commenters have alternative proposals for implementing section 262(h)? For our proposal and any alternative proposal, we seek comment on its costs and benefits (including for smaller providers), implementation issues, and its effect on reducing rural call completion problems.

F. RCC Act Definitions

35. We seek comment on any other issues we should take into account with respect to the RCC Act’s definitions of the terms “intermediate provider,” “covered voice communication,” and “covered provider.” In addition, we seek comment on whether there are any other terms that we should define explicitly for purposes of implementing the RCC Act and, if so, how we should define those terms.

36. *Intermediate Provider.* New section 262(i) of the Act defines an “intermediate provider” as any entity that “(A) enters into a business arrangement with a covered provider or other intermediate provider for the specific purpose of carrying, routing, or transmitting voice traffic that is generated from the placement of a call placed—(i) from an end user connection using a North American Numbering Plan resource; or (ii) to an end user connection using such a numbering resource; and (B) does not itself, either directly or in conjunction with an affiliate, serve as a covered provider in the context of originating or terminating a given call.” We propose to adopt the same definition of “intermediate provider” in our rules implementing the RCC Act. We seek comment on this proposal and on what, if any, additional guidance we should provide concerning this definition. We also seek comment on possible alternatives.

37. Our existing rural call completion rules define “intermediate provider” differently

from the RCC Act. Specifically, under section 64.2101 of the Commission’s rules, “intermediate provider” is given the same meaning as in section 64.1600(f), which defines it as “any entity that carries or processes traffic that traverses or will traverse the PSTN at any point insofar as that entity neither originates nor terminates that traffic.” For our rural call completion rules governing covered providers, we propose to modify the existing definition of intermediate provider in section 64.2101 to make it consistent with the definition of intermediate provider in the RCC Act. We seek comment on the effects of this proposed modification. Do commenters believe that there is a substantive difference between the definition of “intermediate provider” in our existing rules and in the RCC Act? Should we supplement our proposed definition of “intermediate provider” to reflect this difference, and if so, how? For example, should certain types of entities be exempt from the definition of “intermediate provider”?

38. *Covered Voice Communication.* The RCC Act defines “covered voice communication” as “a voice communication (including any related signaling information) that is generated—(A) from the placement of a call from a connection using a North American Numbering Plan resource or a call placed to a connection using such a numbering resource; and (B) through any service provided by a covered provider.” We propose to adopt the same definition in our rules implementing the RCC Act. We seek comment on this proposal and on any additional guidance we should provide on this definition. We also seek comment on the meaning of the phrase “through any service provided by a covered provider.” Is a voice communication “covered” if it does not originate with a covered provider but the call traverses or terminates on the network of covered provider? Would such voice communication include those carried by non-interconnected VoIP providers or private networks in the call path? More generally, how should non-interconnected VoIP providers and private networks be regulated to

ensure the completion of calls to rural areas, and what rules should apply in that regard?

39. *Covered Provider*. New section 262(i)(1) of the Act gives the term “covered provider” the same meaning as in the Commission’s existing rural call completion rules “or any successor thereto.” For purposes of implementing the RCC Act, we propose to retain the definition of “covered provider” as in our existing rules. We seek comment on this proposal.

G. Legal Authority

40. We believe that the RCC Act gives us ample legal authority to adopt the proposed registration requirements and service quality standards for intermediate providers and any potential alternative proposals. We seek comment on this view, and on additional or alternative sources of authority for the rules we propose and on which we seek comment above. To the extent that additional authority necessary, we seek comment on sections 201(b), 251(a), and 403 as additional sources of authority for our proposals.

H. Sunset of Recording and Retention Rules

41. We seek comment on elimination of the recordkeeping and retention rules adopted in the RCC Order in conjunction with our implementation of the RCC Act. As we have observed, the rural call completion data collection has been characterized by challenges that limit its utility for some of its intended purposes. Going forward, we anticipate that progress on intercarrier compensation reform, our newly adopted requirement that covered providers monitor their intermediate providers, and the implementation of the RCC Act should allow the Commission to more efficiently address rural call completion issues. We therefore seek comment on whether to sunset the remaining recordkeeping and retention rules upon effectiveness of rules we adopt to implement the RCC Act.

42. Alternatively, should we sunset the rules at a different point in time, such as three years from today's Order, on the view that this will allow sufficient time for the Commission to undertake further intercarrier compensation reform, and for compliance with the rules we adopt today and those to implement the RCC Act to promote rural call completion? We seek comment on further alternatives, including whether we should instead retain the recording and retention rules without any sunset.

I. Modification of Rules Adopted in the *Second Report and Order*

43. In the *RCC Second Report and Order*, we conclude that covered provider monitoring requirements we adopt are necessary complements to the intermediate provider requirements created by the RCC Act. We seek comment on whether we should revisit our conclusions as we implement the RCC Act. Should we change the monitoring requirements that we adopt today in light of the service quality standards for intermediate providers under consideration in this *Third Further Notice of Proposed Rulemaking*? If so, how? Should we create a safe harbor for covered providers who work with intermediate providers that meet our quality standards? What would be the contours of such a safe harbor so that it would be meaningful, considering that the RCC Act directs all intermediate providers to meet the quality standards we adopt? Alternatively, should we remove covered provider requirements entirely once the RCC Act is fully implemented? Would such changes jeopardize our ability to identify and penalize providers, including intermediate providers, that violate the Communications Act or our call blocking rules? We seek comment on these and any alternative approaches.

II. INITIAL REGULATORY FLEXIBILITY ANALYSIS

44. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Third Further Notice of Proposed Rulemaking*. The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *Third Further Notice of Proposed Rulemaking*. The Commission will send a copy of the *Third Further Notice of Proposed Rulemaking*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *Third Further Notice of Proposed Rulemaking* and IRFA (or summaries thereof) will be published in the Federal Register.

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

45. The *Third Further Notice of Proposed Rulemaking* proposes and seeks comment on rules to implement the recently-enacted Improving Rural Call Quality and Reliability Act of 2017 (RCC Act). The RCC Act directs us to (1) promulgate registration requirements for intermediate providers within 180 days of enactment, and create a registry for such providers on our website; and (2) establish service quality standards for intermediate providers within one year of enactment. We propose and seek comment on rules to implement the registry provisions of the RCC Act. We further seek comment generally on possible frameworks to implement the service quality standards provisions of the RCC Act. We also seek comment on sunseting the recording and retention rules established in the RCC Order upon implementation of the RCC Act. As we move forward, we will work quickly to implement the RCC Act and continue take other measures as necessary “to ensure the integrity of voice communications and to prevent

unjust or unreasonable discrimination among areas of the United States in the delivery of such communications.”

B. Legal Basis

46. The legal basis for any action that may be taken pursuant to the *Third Further Notice of Proposed Rulemaking* is contained in sections 1, 4(i), 201(b), 202(a), 218, 220(a), 251(a), 262, 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), 262, and 403.

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

47. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules and by the rule revisions on which the NPRM seeks comment, if adopted. 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.

48. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s

Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

49. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” 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 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

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

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

52. *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 NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer 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. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

53. 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.

54. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rules.

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

56. *Toll Resellers*. The Commission has not developed a definition for Toll Resellers.

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

57. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered

small. According to internally developed Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the Second Further Notice.

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

59. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

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

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

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

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

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

65. *Cable System Operators (Telecom Act Standard)*. The Communications Act also contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

66. *All Other Telecommunications*. “All Other Telecommunications” is defined as follows: This U.S. industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are

also included in this industry. The SBA has developed a small business size standard for “All Other Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

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

67. The *Third Further Notice of Proposed Rulemaking* proposes and seeks comment on rule changes that will affect reporting, recordkeeping, and other compliance requirements. In particular, the *Third Further Notice of Proposed Rulemaking* proposes to adopt the definitions of the terms “intermediate provider”, “covered voice communication”, and “covered provider” provided in the RCC Act in our rules. With respect to the RCC Act’s registry requirements, we propose and seek comment on rules to implement those provisions, and seek comment on: (a) how to interpret and implement the RCC Act’s prohibition on covered providers’ use of unregistered intermediate providers; (b) how best to ensure compliance with that prohibition; (c) whether we should adopt any exceptions to the prohibition on using unregistered intermediate providers, and (d) whether any such exceptions would be consistent with the RCC Act. The *Third Further Notice of Proposed Rulemaking* also proposes to require intermediate providers to take reasonable steps to abide by certain industry best practices for rural call completion, and to have processes in place to monitor their own rural call completion performance when transmitting covered voice communications. We seek comment on how to enforce the registration and service quality requirements that we adopt for intermediate providers. Should

the Commission adopt these proposals, such action could result in increased, reduced, or otherwise altered reporting, recordkeeping, or other compliance requirements for covered providers.

68. In the *Third Further Notice of Proposed Rulemaking*, we also propose to retain the three qualification requirements of our existing safe harbor rule, and seek comment on sunsetting the recording and retention rules established in the RCC Order upon implementation of the RCC Act. Should the Commission adopt these measures, we expect such action to reduce reporting, recordkeeping, and other compliance requirements. Specifically, these measures should have a beneficial reporting, recordkeeping, or compliance impact on small entities because many providers will be subject to fewer such burdens.

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

69. 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.

70. The *Third Further Notice of Proposed Rulemaking* seeks comment on a variety of proposals to implement the registry provisions of the RCC Act and possible frameworks to implement the service quality standards provisions of the RCC Act. It also specifically seeks

comment on the benefits and burdens to smaller providers of our proposals (and any potential alternative proposals) for structuring and managing the intermediate provider registry. With respect to possible frameworks to implement the service quality standards, the *Third Further Notice of Proposed Rulemaking* seeks comment on the costs, benefits, and impact on smaller intermediate providers of each of the proposals outlined and each potential alternative proposed by commenters. We also seek comment on how to interpret and implement the RCC Act's prohibition on covered providers' use of unregistered intermediate providers, and we seek comment on the costs and benefits (including to smaller providers) and implementation issues for each potential interpretation.

71. *The Third Further Notice of Proposed Rulemaking* seeks comment on all of our proposals, as well as alternatives that could also address rural call completion problems while reducing burdens on small providers. In the *Third Further Notice of Proposed Rulemaking*, we explicitly seek comment on the impact of our proposals on small providers. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *Third Further Notice of Proposed Rulemaking*, in reaching its final conclusions and taking action in this proceeding.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

72. None.

III. PROCEDURAL MATTERS

A. Comment Filing Procedures

73. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415,

1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document in Dockets WC 17-192, and CC 95-155. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to

445 12th Street, SW, Washington DC 20554.

- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

74. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by Rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding,

and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Initial Regulatory Flexibility Analysis

75. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this *Third Further Notice of Proposed Rulemaking*. The text of the IRFA is set forth above. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comment on the *Third Further Notice of Proposed Rulemaking*. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Third Further Notice of Proposed Rulemaking*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

C. Paperwork Reduction Act

76. This document contains proposed new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

D. Contact Person

77. For further information about this proceeding, please contact Zach Ross, FCC

Wireline Competition Bureau, Competition Policy Division, Room 5-C211, 445 12th Street, S.W., Washington, D.C. 20554, at (202) 418-1033 or Zachary.Ross@fcc.gov.

IV. ORDERING CLAUSES

78. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 201(b), 202(a), 217, 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), 217, 218, 220(a), 251(a), and 403, this *Third Further Notice of Proposed Rulemaking* IS ADOPTED.

79. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this *Third Further Notice of Proposed Rulemaking* to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

80. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Third Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 64 Miscellaneous rules relating to common carriers.

Communications common carriers

Reporting and recordkeeping requirements

Telecommunications

Telephone

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary.

Proposed Rules

For the reasons set forth above, The Federal Communications Commission proposes to amend Part 64 of Title 47 of the Code of Federal Regulations as follows:

PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 202, 225, 251(e), 254(k), 262, 403(b)(2)(B), (c), 616, 620, Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 202, 217, 218, 220, 222, 225, 226, 227, 228, 251(a), 251(e), 254(k), 262 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

2. Amend § 64.2101 by adding a definition of “covered voice communication” and revising the definition of “intermediate provider” to read as follows:

§ 64.2101 Definitions.

* * * * *

Covered voice communication. The term “covered voice communication” means a voice communication (including any related signaling information) that is generated—

- (1) from the placement of a call from a connection using a North American Numbering Plan resource or a call placed to a connection using such a numbering resource; and

- (2) through any service provided by a covered provider.

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Intermediate provider. The term “intermediate provider” means any entity that—

- (a) enters into a business arrangement with a covered provider or other intermediate provider for the specific purpose of carrying, routing, or transmitting voice traffic that is generated from the placement of a call placed—

(1) from an end user connection using a North American Numbering Plan resource; or

(2) to an end user connection using such a numbering resource; and

(b) does not itself, either directly or in conjunction with an affiliate, serve as a covered provider in the context of originating or terminating a given call.

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3. Amend § 64.2107 by revising to read as follows:

§ 64.2107 Safe Harbor from Intermediate Provider Service Quality Standards.

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

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

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

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

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

(B) annually thereafter.

(b) The requirements of section 64.2117 shall not apply to covered providers who qualify as safe harbor providers in accordance with this section.

4. Add § 64.2115 to subpart V to read as follows:

§ 64.2115 Registration of Intermediate Providers.

(a) *Requirement to use registered intermediate providers.* A covered provider shall not use an intermediate provider to transmit covered voice communications unless such intermediate provider is registered pursuant to this section.

(b) *Registration.* An intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission shall register with the Commission in accordance with this section. The intermediate provider shall provide the following information in its registration:

(1) The intermediate provider's business name(s) and primary address;

(2) The name(s), telephone number(s), email address(es), and business address(es) of the intermediate provider's regulatory contact and/or designated agent for service of process;

(3) All names that the intermediate provider has used in the past;

(4) The state(s) in which the intermediate provider provides service; and

(5) The name, title, business address, telephone number, and email address of at least one person as well as the department within the company responsible for addressing rural call completion issues.

(c) *Submission of registration.* An intermediate provider that is subject to the registration requirement in paragraph (b) of this section shall submit the information described therein through the intermediate provider registry on the Commission's website. The registration shall be made under penalty of perjury.

(d) *Changes in information.* An intermediate provider must update the information provided pursuant to paragraph (b) of this section within one week of any change.

(e) *Effect of registration.* An intermediate provider that submits registration pursuant to subsections (b) and (c) of this section, and receives confirmation that its registration is complete, is thereby granted an authorization to operate as an intermediate provider that covered providers may use under subsection (a).

5. Add § 64.2117 to subpart V to read as follows:

§ 64.2117 Intermediate Provider Service Quality Standards.

An intermediate provider that offers or holds itself out as offering the capability to transmit covered voice communications from one destination to another and that charges any rate to any other entity (including an affiliated entity) for the transmission must comply with the following requirements when transmitting covered voice communications:

(a) The intermediate provider must take reasonable steps to:

(1) prevent handing off a call for completion to a provider that has previously handed off the same call;

(2) release a call back to the originating interexchange carrier if the intermediate provider fails to find a route for completion of the call; and

(3) prevent processing of calls in a manner that terminates and re-originates the calls.

(b) The intermediate provider must have processes in place to monitor its rural call completion performance.

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