

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF LEVEL 3 COMMUNICATIONS, LLC, ON THE RURAL CALL  
COMPLETION NOTICE OF PROPOSED RULEMAKING**

**I. INTRODUCTION AND SUMMARY**

Level 3 Communications, LLC (“Level 3”) has long supported the adoption of clear, objective, and measurable “rules of the road” designed to remove abusive practices from the interexchange market that can pressure providers to sacrifice service quality for the improved cost positions necessary to compete against the abusers. Level 3 applauds the Commission’s decision to move forward with the *Rural Call Completion NPRM* to establish baseline reporting and recordkeeping requirements, and to halt deceptive ring and signaling practices.<sup>1</sup> Properly implemented, these steps can establish a foundation upon which the Commission can enforce Sections 201(b) and 202(a) of the Communications Act, holding carriers—including all intermediate carriers—accountable.

The Commission’s proposed signal integrity rule is a critical step in rooting out call throttling or blocking—but as proposed, this rule is too narrow in scope. Not only should the Commission prevent interexchange carriers from falsely inserting audible ringing when the called party’s phone is not, in fact, ringing, but intermediate carriers should also be prohibited from inserting signaling codes that they have no way of knowing are correct, such as returning a

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<sup>1</sup> *Rural Call Completion*, Notice of Proposed Rulemaking, 28 FCC Rcd. 1569 (2013) (“*Rural Call Completion NPRM*”).

busy code when a call does not complete. Without accurate call status signaling by downstream carriers, an upstream IXC may not know when to shift routing to an alternative intermediate provider.

Furthermore, the Commission should require record retention and the preparation of monitoring reports by all facilities-based interexchange carriers—not just originating carriers. Unless intermediate interexchange carriers also keep data as to their call completion rates to the various rural carriers, the Commission will be unable to conduct necessary enforcement reviews. For data retention and reporting purposes (but not for performance measures), it is no more burdensome to maintain data on all carriers to whom calls are completed than on just those carriers to whom an IXC completes 100 or more calls.

To provide a better barometer of performance in a particular area, the Commission should permit interexchange carriers to segregate mass dialing (such as autodialer) calls from all other calls, inasmuch as these calls are treated differently by consumers than other types of calls, are likely to have a higher level of no-answer calls, and can easily and timely be repeated. Similarly, the Commission should not require facilities-based interexchange carriers to monitor call completion to wireless carriers or rural CLECs. In many cases, these entities employ different network architectures from ILECs that facilitate call completion. In addition, rural CLECs have been a particular locus of access-stimulation schemes, which can also distort a facilities-based IXC's performance even in the absence of any self-help by the facilities-based interexchange carrier. A fairer comparison is between call completion to nonrural ILECs and to rural ILECs.

With respect to performance measures and safe harbors, the Commission should recognize that the causes of call completion problems are complex and often beyond a single provider's control. Lack of capacity in rural areas is a typical example. Some call completion

problems may be the result of few route options into a particular wire center, and occur where connections over the available intermediate providers lack adequate capacity. Problems may exist in the tandem provider's or the terminating LEC's networks. The incidence of non-completed calls could also be depressed by local conditions, such as a storm, other natural disaster, or localized high-calling events such as an election.

The Commission should therefore not begin by establishing performance benchmarks—even safe harbors—at an OCN level, but should implement benchmarks or safe harbors at a more aggregated level, such as nationwide among rural ILECs. Only after the Commission has had the opportunity to review the OCN-level data for which it will be requiring retention and reporting should the Commission consider performance benchmarks or safe harbors at a more disaggregated level.

## **II. THE COMMISSION SHOULD BAR FALSE CALL STATUS SIGNALLING AS WELL AS INSERTED RINGING.**

Level 3 strongly supports the Commission's proposal for a rule banning the insertion of a ringtone when the terminating provider has not signaled that the called party is being alerted to an incoming call.<sup>2</sup> As the Commission notes, this can mislead callers and mask poor call-handling practices.<sup>3</sup> Although the draft rule focuses on insertion of ringing by the originating IXC, the ban should apply to all IXCs handling a particular call, including intermediate carriers. Such tones should be generated only by the terminating carrier, or by the originating carrier when signaled by the terminating carrier. Level 3 also supports the requirement for intermediate carriers to pass through, unaltered, any signaling information that indicates that the terminating

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<sup>2</sup> *Rural Call Completion NPRM* ¶¶ 39-43.

<sup>3</sup> *Id.* ¶¶ 39-40.

carrier is alerting the called party, as well as any audio tone or announcement provided by the terminating carrier.<sup>4</sup>

The rule as proposed by the Commission, however, does not go far enough. Terminating carriers also send call status or disposition codes (also known as “release codes” or “SIP response codes”). If an intermediate carrier deletes or alters these codes, they can frustrate routing by upstream providers. For example, if a downstream intermediate IXC encounters trunk blocking but signals that the number is unassigned rather than that no route is available, then an upstream IXC (which may be the originating carrier or another intermediate provider) will not know to attempt call completion through another provider or over its own facilities. Short-circuiting the ordinary flow of information between carriers can be just as disruptive—if not more so—than falsely inserting ringing. The Commission should address false call-status or disposition signaling as a logical outgrowth of its proposal relating to false ringing.

### **III. THE COMMISSION’S RECORDKEEPING AND REPORTING RULES SHOULD APPLY TO ALL IXCS, NOT JUST ORIGINATING FACILITIES-BASED LONG-DISTANCE PROVIDERS.**

The Commission’s proposed recordkeeping and reporting requirements should apply to all IXCs—including small intermediate carriers. As proposed, the rules apply only to “facilities-based originating long-distance providers.”<sup>5</sup> Both large and small intermediate providers can create rural call completion problems in the fluid and highly competitive wholesale market.

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<sup>4</sup> *Id.* at App’x A (proposed rule 64.2201(b)).

<sup>5</sup> In full, the Commission proposes to adopt a rule “requiring that facilities-based originating long-distance providers measure the call answer rate for each rural operating company number (OCN) to which 100 or more calls were attempted during the calendar month for the categories of call attempts identified below, and that originating long-distance providers also measure the overall call answer rate for nonrural call attempts.” *Rural Call Completion NPRM* ¶ 20 (footnote omitted). If the originating provider is not facilities-based, then the Commission’s rules apply to “the first facilities-based provider that is involved in the call.” *Id.* ¶ 24.

Regardless of size, an intermediate provider might be one of only a few routes into a set of communities, or may be a national operator that routes a larger or smaller volume of calls to other IXCs for termination. In either case, ignoring these providers will substantially undermine the accountability the Commission seeks. Lack of data on intermediate providers will hamstring the Commission's enforcement efforts against those whose sustained inadequate performance is the root cause of degraded service to rural areas. Moreover, lack of data on small wholesalers will allow them to create a low quality, low-price arbitrage niche that will undermine the efforts of large carriers to compete while maintaining higher service quality levels.

If the Commission does not hold intermediate providers directly accountable, rather than only indirectly through originating providers, the Commission will have failed to address the core problem. For this reason, Level 3 agreed, in its Consent Decree, to monitor both its performance as an intermediate provider and the performance of its intermediate providers.<sup>6</sup> It is more appropriate for the Commission to directly police intermediate carrier activity than to rely solely on originating carriers to do so, with the threat of sanctions for violations of Sections 201(b) and 202(a) resting solely on the originating facilities-based carrier, rather than the intermediate providers that may actually be responsible for degraded performance.

There is evidence that simply enforcing the rules against originating carriers does not necessarily forge a lasting solution. Even if an originating carrier identifies and removes a poorly performing intermediate provider from its route options, that does not mean that the same intermediate provider is not in another originating carrier's routing. Accordingly, simply

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<sup>6</sup> As part of its Consent Decree, Level 3 agreed to not only provide regular reports on its own wholesale call completion rates, but also to monitor the performance of intermediate providers and to provide those reports to the Commission upon any administrative subpoena. *See Level 3 Commc'ns, LLC*, Consent Decree, 28 FCC Rcd. 2272, ¶¶ 16(b); 16(d), 17(a), 17(d) (rel. Mar. 12, 2013) ("*Level 3 Consent Decree*").

removing a problem intermediate provider from one originating carrier's routing does not fix the problem, as traffic will still flow to the problem intermediate provider from others. Further, even if an originating carrier identifies and removes a poorly performing intermediate provider from its route options and then the situation improves and the carrier is reinstated, the intermediate carrier's performance may subsequently deteriorate until detected again by the originating carrier.<sup>7</sup> Putting the intermediate carrier in jeopardy of direct FCC sanctions adds a powerful incentive for the intermediate provider to maintain adequate call completion performance.

For the same reasons, the Commission should not allow small intermediate providers—as distinguished from small originating IXCs—to escape its record-keeping and reporting rules through a small-provider exclusion. The Commission proposes to require only those originating long-distance providers and other covered providers with more than 100,000 retail long-distance subscribers to retain call completion information and submit reports to the Commission.<sup>8</sup> In the first instance, an exception based on the number of retail subscribers would make no sense for an intermediate provider. But even if this threshold were stated in minutes, it would mean that a small provider could provide inexpensive, low quality call termination to rural areas, while concentrating primarily on lower cost urban terminations. It makes no sense for the Commission expressly to create such arbitrage opportunities.

**IV. THE PROPOSED DATA RETENTION REQUIREMENTS SHOULD BE REFINED TO INCLUDE DATA NECESSARY TO MONITOR CALL COMPLETION BY INTERMEDIATE PROVIDERS AND TO ELIMINATE INFORMATION THAT IS UNNECESSARY OR IMPRACTICAL TO INCLUDE ON A CALL-BY-CALL BASIS.**

The NPRM proposes that IXCs record and retain, for each call attempt, the calling and called party numbers, whether the call was handed off to an intermediate provider (and the

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<sup>7</sup> See, e.g., *NTCA Ex Parte*, WC Docket No. 13-39 (filed Apr. 25, 2013).

<sup>8</sup> *Rural Call Completion NPRM* ¶ 31.

identity of such provider), whether the call was destined for a rural carrier and the OCN of such a carrier, whether the call attempt was interstate, and whether the call was answered.<sup>9</sup> Level 3 does not object to the requirement to capture and retain much of this information for a limited period of time, such as six months. However, it is impractical to record call jurisdiction on a call-by-call basis. Further, the proposed requirements focus only on data necessary to monitor originating carrier performance, and do not include some data necessary to monitor performance by intermediate IXC.

**A. The Commission should not require interexchange carriers to track jurisdiction call by call.**

The Commission should not require interexchange carriers to track jurisdiction call by call. As the Commission is well aware, frequently, IXCs do not track jurisdiction on a call-by-call basis. For wireless and nomadic VoIP customers, for example, it is not always possible to determine jurisdiction—local, interexchange intrastate, or interexchange interstate—based on the calling and called numbers. Even for wireline calls, carriers frequently use percentage of interstate use (“PIU”) factors to determine call jurisdiction for billing large batches of access minutes, rather than call-by-call Call Detail Records (“CDRs”). It is simply not going to be possible to determine and track jurisdiction on a call-by-call basis. The Commission should limit itself to focusing on the completion of calls bound for rural areas, irrespective of jurisdiction.

**B. Wholesale providers should record, for each call attempt, whether the call was handed back to the originating interexchange carrier.**

To ensure that intermediate providers are performing adequately, and so as not to distort reporting for wholesale providers who return calls that they cannot complete to the originating (or upstream intermediate) carrier for termination by another means, intermediate providers

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<sup>9</sup> See *id.* ¶ 22.

should record, for each call attempt, whether the call was handed back to the originating interexchange carrier. This information will allow the Commission to accurately calculate call completion rates. As the Commission recognizes, call attempts that are handed back to an upstream provider should be excluded from the category of call attempts covered by the proposed rules, because including calls handed back to the interexchange carrier would result in double-counting multiple attempts for the same call.<sup>10</sup> Further, the fact that a wholesale call was handed back to the upstream interexchange carrier is irrelevant to whether the call was, or was not, completed.

**C. The Commission should not require providers to differentiate between business and residential users in its data collection and retention requirements.**

Level 3 agrees that the Commission should carefully distinguish calls to rural ILECs from all other calls, such as rural CLECs and wireless carriers.<sup>11</sup> The Commission, however, should not require IXCs to track call records or call completion according to whether either the calling or called party is a residence or a business.<sup>12</sup> With respect to the called party, an IXC cannot determine whether the entity to which a call is destined is a residence or a business, as the called party is not the IXC's customer.<sup>13</sup> On the originating end, the first facilities-based IXC will not necessarily have a customer relationship with the calling party—for example, when the calling party is a customer of a switchless reseller—and all intermediate providers, by definition, will not have customer relationships with the calling party. Thus, the Commission should not directly or indirectly (such as through a call-completion standard) require IXCs to collect and

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<sup>10</sup> See *id.* ¶ 27.

<sup>11</sup> See *id.* ¶¶ 25, 36.

<sup>12</sup> See *id.* ¶ 36.

<sup>13</sup> The exception is in the case of toll-free calls, but these should be excluded from call completion rate calculations as explained in subsection V.A., *infra*.

retain data as to whether a specific calling or called party is a business or a residence, as it is the expectation of end users of modern phone networks that there is no differentiation between the two.

**V. THE COMMISSION SHOULD FOCUS CALL COMPLETION RATE REPORTING ON VOICE CALLS TO RURAL ILECS FOR WHICH REPEATED ATTEMPTS ARE NOT LIKELY.**

In its reporting requirements, the Commission proposes to require originating IXC's to report their call completion rate to each rural OCN to which they terminate 100 or more calls. Level 3 supports such reporting provided, as discussed above, that it be extended to intermediate providers as well as the originating IXC's, and that the call attempts, calls answered, and call completion rates to be reported be tailored to address rural call completion for voice calls for which there is an expectation of high quality delivery.

**A. The Commission should exclude from its definition of a "call attempt" calls that are not indicative of service levels for voice calls for which consumers reasonably expect high quality delivery.**

As proposed, the Commission's rules would include (1) mass dialing and auto-dialed traffic, (2) calls handed back to an upstream provider, and (3) toll-free calls, calls of short duration, and internal test calls in its definition of call attempts. These categories of calls will serve only to distort the picture of rural call completion and should be excluded. Level 3 supports including, however, calls to unallocated numbers and ring/no answer calls.

*Mass Dialing and Auto-Dialed Traffic.* Mass dialing and autodialer traffic should be excluded from the total number of call attempts.<sup>14</sup> The market recognizes that these types of

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<sup>14</sup> Mass dialers can be a broader category than "autodialers," as they are defined by 47 C.F.R. § 64.1200(f)(2). The Commission's rules define an "autodialer" as "equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers." *Id.* Telemarketers, as defined in 47 C.F.R. § 64.1200(f)(11), can provide substantially the same functionality with software, a telemarketing "boiler room" operation, or any other practice that results in a

calls are different and have different calling patterns (mass dialers may, for example, make more calls to unallocated numbers if using a predictive dialer). Generally, if a mass dialer’s call is not completed it can be placed automatically again—and again. Further, these customers purchase services managed to lower quality than non-mass dialers.<sup>15</sup> In addition, these calls can be seasonal on a localized basis, such as around the times of elections, which can vary from location to location. One objection to excluding this category of calls is that it may not count call attempts by “emergency” autodialers—such as “Reverse 911” calls and similar public safety mass dialing. But such calls are too rare to meaningfully influence call completion rates. Further, it is impractical to try to distinguish “emergency” autodialers from others, because they are too small a universe to practically be able to track.

*Calls Handed Back to an Upstream Provider.* The Commission proposes excluding call attempts that are handed back to an upstream provider to avoid double-counting multiple attempts for the same call.<sup>16</sup> Level 3 supports this proposal as clearly beneficial and easily achievable.<sup>17</sup> This exclusion should apply to both originating carriers’ reports and wholesale providers’ reports. Originating carriers should report each call only once—the final call attempt. For wholesale providers, this exclusion will ensure that a provider does not count as non-completed a call that it merely handed back to the upstream provider for completion.

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large volume of short duration calls. In excluding this category of calls, the Commission should be sure to capture *all* calls made by a mass dialer, rather than just those made with the equipment described in the Commission’s TCPA regulations.

<sup>15</sup> For these reasons, Level 3’s Consent Decree excluded telemarketers and other mass-dialers from its definition of call attempts. *See Level 3 Consent Decree* ¶¶ 1(k), 1(dd); App’x A § 3 (providing a methodology for identifying “mass dialers”).

<sup>16</sup> *See Rural Call Completion NPRM* ¶ 28.

<sup>17</sup> The Level 3 Consent Decree specifies release codes or SIP Response Codes that can be used to determine when a call was handed back to an upstream carrier. *See Level 3 Consent Decree* at App’x A § II.

*Toll-Free Calls, Calls of Short Duration, and Internal Test Calls.* Level 3 supports excluding (1) calls to toll-free numbers, (2) calls of very short duration, and (3) internal network test calls.<sup>18</sup> Toll-free calls should be excluded, because the terminating customer directly pays the toll-free provider, and thus the terminating provider controls the quality of call completion. Calls of short duration should be excluded because they are often wrong numbers, are made by mass dialers, and/or do not provide the called party ample time to answer. Internal test calls should be excluded because they do not reflect the call quality of a carrier’s broader network. Moreover, including these calls would dis-incent testing, which the Commission should not do.

*Unallocated Numbers and Ring/No Answer.* Level 3 supports the Commission’s inclusion of reporting unallocated and ring/no answer calls.<sup>19</sup> Level 3 agrees that excluding such calls could mask attempts that actually failed, given that the call signaling provided by downstream providers is not always reliable.<sup>20</sup>

**B. “Answered call attempts” should include all calls answered on behalf of a called party.**

The Commission proposes defining an “answered call attempt” as “a call attempt that is answered by the called party, including, for example, by voicemail, answering machine, or fax machine.”<sup>21</sup> The Commission should expand this definition to include calls answered “*on behalf of*” a called party, rather than just calls answered by the called party. Including such calls would yield a more accurate number of completed calls, because it would deem “answered” calls

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<sup>18</sup> *Rural Call Completion NPRM* ¶ 30.

<sup>19</sup> *Id.* ¶ 29.

<sup>20</sup> As the proposed rules do, Level 3’s Consent Decree includes call attempts that are not completed for ordinarily expected reasons—such as a call that rings without answer or a call that is made to an unallocated number—as a call attempt. *See Consent Decree App’x A* (describing a methodology that necessarily includes unallocated and ring/no answer calls in computing the call completion rate).

<sup>21</sup> *Rural Call Completion NPRM* ¶ 27.

received by call-forwarding, unified messaging, IVR systems, or an answering service. Level 3 thus proposes the following definition of an answered call attempt: “An ‘answered call attempt’ is a call that was answered by or on behalf of the called party (including calls completed to devices, services or parties that answer the call such as an interactive voice response, answering service, voicemail or call-forwarding system or any such system that cause the network to register that the terminating party has gone off hook).”<sup>22</sup>

**C. The Commission should exclude access tandems from its definition of intermediate providers.**

For its proposed rules, the Commission adopts the definition of “intermediate provider” set out by section 64.1600(f) of its rules: “[A]ny 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.”<sup>23</sup> While this definition is a good starting point, by its terms, it would include access tandems as intermediate providers. IXC’s, however, usually do not select the access tandem provider, which the terminating LECs specify in the Local Exchange Routing Guide. Rural LECs sometimes subtend the tandem of the adjacent Regional Bell Company, and at other times subtend tandems that are operated or owned by groups of ILECs. Accordingly, delivery to the access tandem should be considered the equivalent of delivery to the terminating carrier. Level 3 thus proposes the following definition: “‘Intermediate Provider’ has the meaning provided in 47 C.F.R. § 64.1600(f), but excludes a tandem provider to which the

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<sup>22</sup> This is essentially the definition adopted by Level 3 in its Consent Decree. *See Level 3 Consent Decree* ¶ 1(e).

<sup>23</sup> *Rural Call Completion NPRM* ¶ 1 n.1 (quoting 47 C.F.R. § 64.1600(f)).

terminating carrier subtends or a carrier to which the terminating carrier requires an indirectly interconnecting carrier to deliver traffic.”<sup>24</sup>

**D. The Commission should exclude calls to wireless carriers and CLECs from its call completion reporting requirements.**

The Commission should exclude calls to wireless carriers and CLECs—rural and non-rural—from its call completion reporting requirements. CLECs and wireless carriers have not been the source of complaints, and excluding providers from reporting on termination to these destinations will reduce monitoring and reporting burdens.

The Commission should exclude calls made to wireless carriers, because the Commission did not gear its rural call completion rules toward these carriers. The network architecture of wireless carriers differs from that of traditional wireline carriers. For wireless carriers, one switch will often cover a large geographic area that encompasses both rural and nonrural populations. This makes calls to wireless carriers difficult or impossible to categorize as rural or non-rural. Further, wireless carriers have a lower likelihood of rural call completion problems and have not been the source of complaints. In sum, it is difficult to identify rural calls completed by wireless carriers, and there seems to be little reason to take the trouble. Accordingly, the Commission should exclude calls completed to this category of carriers from its reporting requirements.

For several reasons, rural CLECs should also be excluded. First, rural CLECs generally overlap with non-rural ILECs. Second, rural CLECs have been a significant source of access arbitrage problems, specifically including access stimulation through partnerships with entities that generate significant amounts of inbound calling traffic. Including these entities within rural

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<sup>24</sup> This is the definition that Level 3 adopted in its Consent Decree. *Level 3 Consent Decree* ¶ 1(l).

call completion data retention and reporting could be misleading because these calling patterns could be markedly different from more general termination to areas served by non-rural ILECs. Third, in contrast to rural ILECs, the Commission has not, to date, published a list of the OCNs of “rural CLECs.”<sup>25</sup>

The Commission should instead focus on monitoring call completion to rural ILECs. Rural ILECs have been the largest source of complaints, and focusing on comparisons between rural and non-rural ILECs will address the most similar situations.

## **VI. THE COMMISSION SHOULD REFRAIN FROM SETTING GRANULAR PERFORMANCE REQUIREMENTS AT THIS TIME.**

Although the proposed rules do not explicitly establish performance standards, they implicitly suggest such standards through safe harbors that would be based on very small call completion rate differences on a highly particularized level—two to three percent disparities between rural and nonrural carriers for each OCN. Even the threat of such a standard would generate large compliance costs. At this time it would be better for the Commission to consider the results of its reporting and to address egregious cases for which there are not plausible explanations, rather than focusing on minute differences that could well be due to localized conditions or events.

### **A. Performance standards for noncompliance should only be established at the aggregate rural/non-rural level.**

While it is appropriate for the Commission to set rural call completion performance standards at a broad, aggregate (such as a nationwide) level, establishing such standards at a

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<sup>25</sup> Cf. *Wireline Competition Bureau Announces Deadlines for Comments on Rural Call Completion Notice of Proposed Rulemaking, Invites Comment on List of Rural Operating Carrier Numbers*, Public Notice, WC Docket No. 13-39 (rel. Apr. 18, 2013) (seeking comment on the list of rural OCNs compiled by the National Exchange Carrier Association).

highly granular level, such as an OCN, is premature and would likely yield misleading results. Level 3 has already committed to meet nationwide call completion standards and keep its rural call completion rate within 500 basis points of its non-rural ILEC call completion rate. It would be reasonable to expect all other IXCs to do the same.<sup>26</sup> However, at a more granular level, call completion rates and issues can be affected by regional events, such as (among others) storms or elections, by tandem congestion, by RLEC end office switch capacity, or by the capacity of trunks between a Rural ILEC end office and the tandem it subtends. In each of these cases, calls to a particular OCN may fail more often than calls to non-rural ILECs as a whole, but the failure may not be attributable to the conduct of any IXC.

Establishing OCN-specific call completion performance standards runs the significant risk of punishing IXCs for factors that are beyond their control. Accordingly, the Commission should set performance standards for IXCs—whether originating carriers or intermediate providers—only at the level of all calls nationwide completed to rural ILECs. Doing so would focus on the core problem—calls to rural ILECs—and would yield a picture of rural call completion performance that would minimize localized distortions.

**B. A 100-call-per-month-per-OCN threshold is far too small for a performance standard or safe harbor.**

The proposed 100-call-per-month threshold is too small to provide a meaningful indication of performance on an OCN-by-OCN basis. For an OCN that receives only 100 calls per month, a small variation in customer behavior or ILEC network problems—leading to just two or three more calls not being completed—could push a provider from compliance into

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<sup>26</sup> See *Level 3 Consent Decree* ¶ 16(b).

noncompliance.<sup>27</sup> Two to three calls is far too small a margin of error on which to base compliance evaluations.

**C. The two to three percent allowable difference described in the Commission’s “monitoring performance safe harbor” is too restrictive.**

Similarly, if the Commission adopts a safe harbor, the allowable differential between rural and non-rural ILEC areas should be larger than the two to three percent proposed in the NPRM. The Commission proposes to reduce data-retention obligations and relieve a provider of reporting obligations if a provider can certify that it has, among other things, achieved a call answer rate to rural carriers within two to three percent of similar calls placed to non-rural carriers.<sup>28</sup> While Level 3 supports a safe harbor for providers with a history of good performance and strong internal monitoring, any safe harbor should be wide enough so that it encompasses the wide range of possible variations. Thus, the Commission should raise any safe harbor benchmark to at least 500 basis points, especially when starting a monitoring regime.

**VII. THE COMMISSION SHOULD MAKE THE REPORTING REQUIREMENT QUARTERLY.**

Call reporting should be quarterly and should cover the whole quarter, rather than dividing into months or weeks as monitoring periods. This would reduce (but not eliminate) the amount of fluctuation that would occur within a reporting period due to factors such as the number of weekends, holidays, and other events. Level 3 recommends that the Commission set the reporting dates as follows: on or before April 30, for the preceding January through March; on or before July 31, for the preceding April through June; on or before October 31, for the preceding July through September; and on or before January 31, for the preceding October

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<sup>27</sup> *Rural Call Completion NPRM* ¶ 35 (proposing a safe harbor differential of between two and three percent—in other words, between 200 and 300 basis points).

<sup>28</sup> *Id.* ¶ 35.

through December.<sup>29</sup> This schedule would strike the appropriate balance between (1) fulfilling the Commission's need for timely information, on one hand; and (2) minimizing the regulatory burden on carriers, on the other. A month period between the end of the quarter and the reporting date would allow sufficient time to assemble the data and transmit it to the Commission.

#### **VIII. THE COMMISSION SHOULD SUNSET THESE RULES AS THE END OF THE TRANSITION TO BILL-AND-KEEP.**

Level 3 agrees that the rules established in the *USF/ICC Transformation Order* will ultimately address most of the underlying rural call completion problems.<sup>30</sup> As carriers transition to bill-and-keep, incentives for many of the practices that degrade service quality to rural areas will disappear. The practices are likely to disappear with them. Level 3 thus supports a provision that would sunset the proposed rules at the end of this transition period.<sup>31</sup>

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<sup>29</sup> These are the terms of Level 3's Consent Decree.

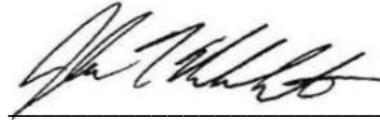
<sup>30</sup> *Connect America Fund A National Broadband Plan for Our Future Establishing Just and Reasonable Rates for Local Exchange Carriers High-Cost Universal Service Support Developing an Unified Intercarrier Compensation Regime Federal State Joint Board on Universal Service Lifeline and Link-Up; Universal Service Reform—Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17904–15, ¶¶ 736–759 (2011).

<sup>31</sup> See 47 C.F.R. §§ 51.907; 51.909.

**IX. CONCLUSION.**

Improving call completion performance to rural areas is a worthy goal, and Level 3 supports the Commission's efforts. Adopting Level 3's suggestions will ensure that the Commission's proposed rules yield useful data, impose no greater burden than is necessary, and do not set unrealistic performance benchmarks for providers.

Respectfully submitted,



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