

I. The Commission Should Publish Call Completion Complaint Data

The Commission seeks comment in the FNPRM on a number of proposals for requiring additional information from providers, in order to assist the Commission in understanding the nature and scope of rural call completion problems. The Commission should also, however, do more to leverage information it already has in its possession. Specifically, the Commission should publish data on the number of call completion complaints it receives, grouped by the rural LEC to which the calls are not completing properly.

To be clear, there is no reason to assume that the fact that a call completion complaint involves a particular rural LEC indicates that the rural LEC itself has done anything improper or has contributed in any way to the call completion problem. But information about call complaints could be valuable both to other providers and to the public. Other carriers, as well as intermediate providers, could focus their attention on how they deliver calls to the specific rural areas that are the subject of complaints, making sure that their calls to those areas are getting through properly. In that regard, Commission data would prove a useful supplement to the data such providers will already be focused on as part of their internal monitoring processes. Publishing information about complaints would also help the public and policymakers get a better sense of the nature and scope of the rural call completion problems, which could only help drive a more productive public discussion about this issue and potential approaches to solving it.

Level 3 proposes that the Commission publish this information at least monthly. Monthly publication would enable carriers and providers to keep abreast of changing patterns of call completion problems and to take appropriate and timely steps in response to those data.

II. The Commission Should Require Intermediate Providers to Report Call Completion Data, but Should Not Impose Additional Certification Requirements

In the *Rural Call Completion NPRM*, the Commission expressed a concern that “some ... intermediate providers ... may be failing to deliver a significant number of calls to rural telephone company customers.”² Level 3 agreed that intermediate carriers were a particular source for concern, and, along with other commenters, urged the Commission to apply any new reporting rules to intermediate carriers.³ Although the Commission did not do so as an initial matter in the Order, it sought comment on whether reporting obligations should be extended to intermediate carriers in a follow-on order.⁴

Level 3 urges the Commission to expand its reporting rules to cover intermediate providers as well. Focusing solely on carriers that make the first routing decision, as the Commission’s current rules do, creates a risk that the Commission may overlook serious call completion problems, and it will likely make it harder for the Commission to take appropriate enforcement action against intermediate providers that are failing to complete calls. That is, a carrier that makes the first routing decision for a call (the “covered provider” under the existing rules) may use several different intermediate providers to deliver calls to a single rural area. But if, for example, one of those intermediate providers performs poorly while the others perform well, the covered provider may report an overall call completion rate that masks the poor performance of one of its intermediate providers. Requiring each intermediate provider to report on its performance addresses this problem, and will enhance the Commission’s ability to identify providers that are performing inadequately and take appropriate action. In short, the best way for

² *Rural Call Completion*, WC Docket No. 13-39, Notice of Proposed Rulemaking, 28 FCC Rcd 1569, ¶ 1 (2013) (*Rural Call Completion NPRM*).

³ See Comments of Level 3 Communications, LLC, WC Docket No. 13-39, at 4-5 (filed May 13, 2013).

⁴ See FNPRM ¶ 122.

the Commission to identify which providers are the cause of call-completion problems is to get specific information from the providers causing those problems themselves.

The Commission also seeks comment on its legal authority for imposing reporting and data retention rules on intermediate providers. The Commission has no less authority to do so, at least with respect to intermediate providers providing service within the United States, than it did to impose these rules on covered providers, including interconnected and one-way VoIP providers, in the Order.⁵ Specifically, even if not subject to section 201 of the Act directly, an intermediate provider offering service in the United States is undeniably providing “communication by wire or radio” and therefore is subject to the Commission’s general authority under Title I.⁶ And for the same reasons the Commission concluded that imposing reporting requirements on VoIP providers was “reasonably ancillary to the [FCC’s] effective performance of its statutorily mandated responsibilities,” including the need to “help clarify where the blame lies” for call completion problems, imposing those reporting requirements on intermediate providers is reasonably ancillary to the Commission’s effective performance of its duties as well.⁷

The Commission also seeks comment on whether it should impose various certification requirements or other obligations on intermediate providers, such as requiring that they certify that they are “terminating ... traffic in compliance with all applicable intercarrier compensation orders, tariffs and agreements.”⁸ The Commission should refrain from adopting any such requirements at this time, as the Commission already has the necessary authority to investigate

⁵ See Order ¶¶ 28-39.

⁶ See 47 U.S.C. § 152(a).

⁷ See Order ¶¶ 37-39 (alteration in original); see also *American Library Ass’n v. FCC*, 406 F.3d 689, 692 (D.C. Cir. 2005).

⁸ See FNPRM ¶ 123.

and take appropriate action in cases where carriers or other providers are *not* complying with applicable law. On the other hand, a certification requirement creates a potential trap for the unwary who would then be subject to penalties, not solely for a failure to follow a substantive requirement, but simply for a failure to make or obtain the required certifications.

III. The Commission Should Require Rural Incumbent Providers to Report Call Completion Data

Regardless of whether the Commission imposes reporting obligations on intermediate providers, it should require rural incumbent providers to report call completion data.⁹ Indeed, doing so is likely to be essential in order for the Commission to be able to make the most effective use of much of the data it is collecting from providers already required to report or from intermediate providers.

The Commission’s current call-completion reporting requirements for covered providers will produce a wealth of data about how often calls to rural areas are answered, and how often the covered provider receives a signal that the called number was busy or out of service. But the current reports will not tell the Commission—or covered providers—whether those data reflect every call getting delivered to its final destination or not. For example, one covered provider might report, in a given month, that 5 percent of its calls to a specific OCN were answered, 90 percent were to unassigned numbers, and 5 percent were not answered. A second covered provider might report that 40 percent of its calls to that same OCN were answered, 30 percent were to unassigned numbers, and 30 percent were not answered. Yet it might well be that the first provider (and its intermediate providers) delivered every call correctly. On the other hand, many of the second provider’s calls reported as calls to “unassigned” numbers might, in fact, have been calls that an intermediate provider simply failed to deliver. The question for the

⁹ *See id.* ¶ 129.

Commission, when investigating call completion issues, is not what an acceptable call completion rate to a single OCN is in the abstract. A better question is: where does a rural carrier's data *differ* from the data of those providers that deliver traffic to it, and why. To answer that question, the Commission must obtain data from those rural providers, and it should do so.

IV. The Commission Should Modify Its Safe Harbor to Relieve Reporting Obligations on Providers Delivering Calls

In the Order, the Commission adopted a safe harbor for covered providers that commit to limit the number of intermediate providers in any call path to two and sought comment on whether additional safe harbor provisions should be created.

Level 3 recommends that the Commission establish a safe harbor for carriers, on an OCN-by-OCN basis, for any OCN for which a carrier has no “intermediate providers” as defined in the Order. In other words, if a provider carries traffic bound for a rural OCN on its own network until handing that traffic off to the rural carrier (or the terminating tandem), it should qualify for safe harbor treatment with respect to that OCN. The same logic that supports the Commission's existing safe harbor—that limiting the number of intermediate providers is the type of best practice that should protect against call-completion issues—provides even stronger support for a safe harbor for call paths involving *no* intermediate providers. Moreover, there is no reason that any safe harbor should be available only for all or none of a carrier's traffic, rather than at the OCN level. Certainly there is no substantial administrative burden for the Commission under such an approach that would support imposing data reporting and retention requirements for which there is little or no independent justification. Accordingly, to the extent that traffic bound for a specific OCN exhibits characteristics that would qualify it for safe harbor treatment, it should be eligible for safe harbor treatment.

In the Order, the Commission declined to exclude traffic delivered on-net from the reporting requirements adopted.¹⁰ To be clear, while Level 3 believes exclusion would have been the better course, an OCN-based safe harbor for on-net traffic similar to the existing safe harbor would go some way toward achieving the same purpose. While there is, as the Commission stated, some value in obtaining data regarding on-net, “issue-free performance,”¹¹ the same would be true of traffic that is already eligible for the safe harbor. The value of obtaining this data cannot justify requiring reporting for on-net performance to any greater extent than it does for those who qualify under the existing safe harbor. And in any event, by creating a safe harbor for on-net traffic rather than excluding it entirely, the Commission will still obtain data on “issue-free performance” for the first year a carrier avails itself of the safe harbor.

V. Not All Autodialer Calls Can Readily Be Excluded from Reports

Recognizing that a provider’s call completion results will likely be significantly affected by the amount of autodialer traffic the provider carries, the Commission seeks comment on whether it is possible for providers to distinguish such traffic from other traffic, and whether providers should be required to report call completion performance for non-autodialer traffic separately. Level 3 agrees that, because, for a variety of reasons, autodialer calls tend to be answered at a lower rate than non-autodialer calls, comparing call completion rates between carriers will in many cases reveal more about the *type* of traffic carried than any carrier’s ability to deliver it. To be able to compare call completion rates across carriers on an apples-to-apples basis, it would be critical to ensure that the comparison is actually focused only on apples—or, in this context, non-autodialer calls. Unfortunately, in Level 3’s experience, while it is possible to readily identify *some* autodialer traffic, not *all* autodialer traffic can be so readily identified. A

¹⁰ See Order ¶ 51.

¹¹ See *id.*

report that excludes only a fraction of autodialer traffic will likely be of little use to the Commission, however. Accordingly, Level 3 recommends that the Commission refrain from requiring providers to provide call completion data on all calls excluding autodialed calls.

Level 3 carries a wide range of voice traffic, including traffic from enterprises customers as well as wholesale customers. In situations where Level 3's customer is the entity initiating autodialer calls, Level 3 is able to identify that traffic because it is delivered on dedicated connections, and Level 3 could segregate it for reporting purposes.¹² That is not, however, always the case. Level 3 wholesale customers can hand off traffic to Level 3 that includes both autodialer as well as non-autodialer traffic on the same dedicated connection. And while it is possible to make some educated guesses about whether some of that traffic might be autodialer traffic, Level 3 has not been able to develop filters to reliably exclude all autodialer traffic.¹³ As a result, whatever filters Level 3 might apply to try to screen out autodialer traffic would inevitably leave in an unknown quantity of autodialer traffic.¹⁴

Reports that exclude some autodialer calls but leave in an unknown quantity of autodialer calls are likely to be no more helpful to the Commission than reports that do not exclude autodialer calls. Indeed, such reports could create confusion about call completion performance, because such reports might encourage observers to believe that comparisons between carriers

¹² The Level 3 consent decree requires Level 3 to perform such segregation. *See* Level 3 Communications, LLC, Consent Decree, 28 FCC Rcd 2272, 2275-76, 2289, ¶¶ 1(k), 1(dd), App. A part III (2013).

¹³ For example, if a single telephone number is associated with tens of thousands of calls to unallocated numbers, that telephone number is likely placing a large number of autodialer calls. Yet of course many autodialer calls do not share those characteristics; many might call only allocated telephone numbers, or might make only a relatively few calls to a particular rural OCN because they are also making telephone calls to other areas. In addition, it is possible that filters designed to exclude autodialer traffic based on call characteristics could exclude calls that, while sharing those characteristics, are not, in fact, autodialer calls.

¹⁴ Applying filters could result in the exclusion of non-autodialer calls as well. *See supra* n.13.

would be more reliable than they actually were. Additionally, as the Commission recognized in the FNPRM,¹⁵ to the extent rural carriers also report on call completion data for received calls, it would be most helpful for those reports to contain the same set of calls as the reports of those who are delivering calls to those rural carriers. Accordingly, Level 3 recommends that the Commission refrain from requiring providers to generate reports that attempt to exclude autodialer calls unless a reliable means can be developed for doing so.

Respectfully submitted,

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¹⁵ See FNPRM ¶ 121.