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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Implementation of the Local Competition	)	RM 9101
Provisions in the Telecommunications Act	)	
of 1996	)	

OPPOSITION OF U S WEST, INC.

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OPPOSITION OF U S WEST, INC.

I. INTRODUCTION AND SUMMARY

U S WEST, Inc. ("U S WEST") opposes the Petition for Expedited Rulemaking ("Petition") filed by LCI International Telecom Corp. and Competitive Telecommunications Association ("Joint Petitioners") on May 30, 1997 with the Federal Communications Commission ("FCC" or "Commission").[1] Joint Petitioners ask the Commission to establish an expedited rulemaking "to establish the performance standards that must be met for [incumbent local exchange carriers] ILECs to meet the [operational support system] OSS requirements"[2] of the Commission's First Report and Order.[3] Yet, at the same time, Joint Petitioners

[1] Petition for Expedited Rulemaking filed May 30, 1997. And see Public Notice, Comments Requested On Petition For Expedited Rulemaking To Establish Reporting Requirements And Performance And Technical Standards For Operations Support Systems, RM 9101, DA 97-1211, rel. June 10, 1997.

[2] Petition at Summary, i.

[3] In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, First Report and Order, 11 FCC Rcd. 15499, 15751-768 ¶¶ 504-28 (1996), on appeal sub noms. Iowa Utilities Board, et al. v. FCC, No. 96-3321 (8th Cir.) ("First Report and Order").

acknowledge that the Commission has already set the baseline regulatory "standard" with respect to OSS access: non-discriminatory access to such systems at "parity" with the ILEC itself.[4] Assessments of whether discrimination is occurring or parity is being achieved do not require the establishment of national performance measurements, as Joint Petitioners request.

Fundamentally, U S WEST's opposition stems from the discontinuity between the current regulatory standard established for OSS access, i.e., nondiscrimination, and Joint Petitioners' proposed requests for relief. Those requests, while argued as being necessary to establish ILEC compliance with the Commission's current OSS access mandates, actually look toward the establishment of "higher quality" OSSs than ILECs currently have in place.[5]

Clearly there must be some method by which a determination can be made that ILECs are meeting their obligations under the Commission's First Report and Order. However, the establishment of national performance standards is not an appropriate method.

State Commissions are in the best position to determine whether discrimination is occurring and, if so, to outline the appropriate remedial next steps. As is obvious from the voluminous Appendices filed by the Joint Petitioners, states

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[4] Indeed, the Petition acknowledges that "The provision of nondiscriminatory access to their OSS functions, where the ILECs provide [competitive local exchange carriers] CLECs with at least the same quality of access that they provide to themselves (i.e., parity), is a cornerstone of . . . the [First Report and Order]." Petition at Summary, i.

[5] And, Joint Petitioners argue that these higher quality OSSs should be established, in many cases, at no cost to themselves.

are currently very engaged in the issue of OSS access to third parties.

One way some State Commissions are addressing this matter is through actual reporting of ILEC performance associated with OSS access. This allows comparisons and analyses to determine whether there is any discrimination and, if so, whether it is either material or adverse. This is a far more direct and superior method of detecting discrimination than the establishment of national performance standards. Indeed, such reporting has long been utilized to identify discriminatory practices in the Open Network Architecture ("ONA") environment.

It appears quite obvious that the establishment of national performance standards really has little relevancy to parity -- but a great deal to do with what Joint Petitioners call "fully-functional" OSSs. With the "fully-functional" adjective being directed almost exclusively to what the CLECs want and do not want and with no reference to parity with existing ILEC systems. Thus, the establishment of such standards is directed toward the creation of "higher quality" network elements, not unbundling of the current OSS network element.

Because the ILECs are currently consumed with the basic obligation of ensuring equivalent access to current OSSs, they should not be burdened by having to participate in a rulemaking that seeks to define the particulars of "higher quality" network elements or regulatory mandates requiring the creation of such elements, at this time. In order for ILECs to satisfy their OSS access obligations, while still meeting "customer" (i.e., CLEC) demands, discussions are ongoing about the incorporation of certain non-standard "higher quality" features into current OSS architectures. Nothing beyond such voluntary activity should be mandated at this

time.

If the Petition demonstrates nothing else, it clearly suggests the enormity and complexity of the task of complying with the Commission's OSS requirements. No one can deny that the Commission established an exceedingly ambitious, if not impossible,[6] deadline for providing nondiscriminatory access to ILECs' OSSs. It is ironic that Joint Petitioners largely ignore this fact, concentrating instead on "[Regional Bell Operating Company] RBOC bashing" throughout their lengthy Petition.[7]

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[6] While the Commission has never affirmatively acknowledged that its OSS implementation mandates might well have been overreaching, from a technical and deployment perspective, the Commission certainly has sought to alleviate the adverse effects that might be visited upon an ILEC who could not fully comply with the Commission's requirements. For example, in its Second Order on Reconsideration it stated that, "Although the requirement to provide nondiscriminatory access to network elements and services for resale includes an obligation to provide access to OSS functions no later than January 1, 1997, we do not anticipate initiating enforcement action against incumbent LECs that are making good faith efforts to provide such access within a reasonable period of time, pursuant to an implementation schedule approved by the relevant state commission." In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Second Order on Reconsideration, 11 FCC Rcd. 19738, 19744 ¶ 11 (1996) ("Second Order on Reconsideration"). In essence, this was a concession that states, in their capacity of overseeing implementation of the Commission's First Report and Order, were better equipped than the Commission to make any necessary "adjustments" or "modifications" to the implementation schedule, based on factors such as the complexity of the task, the reasonableness of the requests and so on.

[7] Had the Commission not mandated such an aggressive timeline for electronic access to OSSs, Joint Petitioners would not even have grounds for complaint. Repeatedly, the most often cited "failure" of the ILECs in the area of OSS implementation is the fact that full electronic access capability could not be produced by January 1, 1997. See Petition at 4-5. A more conservative implementation schedule would leave those complaining about the state of implementation with little to complain about.

II. NONDISCRIMINATORY ACCESS CANNOT BE EQUATED WITH A REQUIREMENT TO ESTABLISH NATIONAL STANDARDS

A. The Simulated Parity Proposal Of Joint Petitioners

Joint Petitioners do not appear to be fundamentally confused about the "parity" standard established by the Commission. However, as demonstrated below, the relief they seek does not advance that standard. Indeed, often their requests for relief seem to ignore the standard altogether.

According to Joint Petitioners, while the Commission established an appropriate standard for OSS access compliance, i.e., parity, its failure to articulate a "definitive statement setting out what it would take for an ILEC to be in compliance with the OSS provisions of the [First Report and Order],"[8] has created a regulatory vacuum that needs to be filled. The Joint Petitioners propose to fill that vacuum with what they call "qualitative" and "quantitative" standards.[9]

Joint Petitioners propose that, to prove "parity," an ILEC be required to meet an "outline[ ] [of] what is required to have a fully-functioning OSS accessible to the [competitive local exchange carriers] CLECs on an adequate basis."[10] Of course, a

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[8] Id. at 1, 7 (the Commission's Orders currently do not contain "particular performance standards or benchmarks").

[9] Id. at 7. Joint Petitioners endorse the Local Competition Users Group ("LCUG") "Foundation for Local Competition: Operations Support Systems Requirements for Network Platform and Total Services Resale" (qualitative terms) and the LCUG Service Quality Measurements (quantitative terms). The LCUG, comprised of five CLECs (AT&T, LCI, MCI, Sprint and WorldCom), does not represent all CLECs, particularly those smaller in size. Nor has the group internally been able to come to consensus on such issues as technical standards.

[10] Petition at Summary, i.

"fully-functioning OSS" standard[11] is not the equivalent of nondiscriminatory access to an ILEC's existing OSSs.

Joint Petitioners actually present their proposal as a sort of "simulated-parity" standard. They claim that "performance standards" need to be established so that "CLECs [can] determine if they are being provided parity of OSS access."[12] Under Joint Petitioners' "simulated parity" theory, "[i]f an ILEC meets [their] suggested criteria, it . . . can be assumed that parity has been achieved."[13] Yet, Joint Petitioners' criteria is not at all grounded in nondiscriminatory access designed to achieve parity. There is little, if any, recognition of the existing types of OSSs and the quality of access that ILECs currently employ in their own local service operations.

Not being in pursuit of actual parity, what Joint Petitioners desire is a detailed, lengthy list of what they call "minimum criteria that a reasonable and adequate fully-functioning OSS would need to meet if the CLECs are to have the

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[11] Joint Petitioners' requirements for such a "fully-functional" OSS regime require "performance standards" that go beyond those in place for most internal ILEC operations. For example, the requirements include: "(i) service orders filled within 24 hours; (ii) firm order confirmations returned within 4 hours; (iii) telephone numbers available immediately; (iv) usage and billing information provided within 24 hours; and (v) service outages tracked and reported every 4 hours and faulty service restored within 24 hours. As to capacity, a fully-functioning OSS should handle all processes to support new orders for 5% of the customer base per month. As to effectiveness, a fully-functioning OSS should be systems operational 99.7% of the time and provide accurate data." Petition at i-ii, 5-6, 8-9.

[12] Id. at Summary, i. Another term for such "standard' might be performance or service quality "measurements."

[13] Id. at Summary i, 2, 8 (where Joint Petitioners expressly acknowledge that parity *per se* need not be achieved if its proposed performance standards are met).

opportunity to provide the service that customers demand."[14] The list, however, is really a CLEC wish list,[15] devoid of any nondiscriminatory focus or objective.

B. Joint Petitioners' Requests For Relief Should Be Denied Since They Generally Have Little To Do With Parity

Joint Petitioners' confusion over the evidence necessary to support compliance with the existing regulatory mandate for nondiscriminatory OSS access leads them to a number of "requests for relief," most of which have no relation to the "parity" obligation. Rather, the vast majority of their requests for relief seek to advance their "fully-functioning" OSS desires. Joint Petitioners' requests for relief, beyond that pertaining to disclosure (discussed more fully below), are devoid of any reference to "parity" or relevancy to a "parity" determination. For example, Joint Petitioners request that:

- the Commission determine the appropriate minimum national performance standards;
- the Commission establish related OSS requirements; and
- the Commission model its mandated performance standards on the standards formulated by a CLEC Group.[16]

The absence of symmetry between the mandated standard, parity, and the

[14] Id. at 6.

[15] Joint Petitioners' "wish list," contained in its Appendices A and B, resembles a Department of Defense specification for the next generation weaponry. It lacks reference to the types/kinds of OSSs or access that ILECs provide to themselves. Similarly, there is no reference to the cost associated with providing Joint Petitioners with what is clearly in many cases "higher quality" OSS access than ILECs provide themselves. (See further discussion of this issue in Section III below.)

[16] Petition at Summary, v, 2.

Joint Petitioners' above requests for relief is obvious. But, this is not surprising, because the requested relief is not based on the Commission's mandated OSS obligations. Rather, the foundation for Joint Petitioners' requests for relief most often pertain to "higher quality" OSSs and interfaces than the ILECs currently enjoy themselves. For this fundamental reason, the vast majority of Joint Petitioners' requests for relief should be denied.

One of Joint Petitioners' requests for relief has the potential to be of use in the determination of nondiscrimination and parity of access. While Joint Petitioners call it "disclosure,"[17] U S WEST prefers to characterize it as "reporting."[18] As discussed more fully below, reporting can in fact provide reviewing parties with the baseline ability to determine whether or not any material deviation from parity exists. The reporting itself can be made either to affected parties, i.e., the CLECs,

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[17] Joint Petitioners would require disclosure of each ILEC's OSS and whether there are internal performance standards associated with the OSS, together with appropriate historical data and measurement criteria. Id. at Summary, v, 2. At times, Joint Petitioners suggest that an ILEC disclosure requirement would be sufficient in and of itself as a remedy. For example, they note that the Department of Justice observed that the SBC Section 271 Petition was lacking in "retail performance information" (Summary at i); and that their proposed "concrete recommendations . . . should be applied, at least in the absence of the ILECs' disclosing their own performance standards, measurements and historical data" (Petition at 2; emphasis added). However, this "concession" all too often is lost in the "bigger picture" proposal laid out by the Joint Petitioners, and it fails to accommodate those situations where performance measurements *per se* – measurements not necessarily relevant to internal systems operations – are not tracked. See note 18, infra.

[18] This characterization avoids the issue of whether there are any internal, existing performance standards in the first place. If there are none (see Petition at 8, referencing a BellSouth position that it does not track such measurements currently), "disclosing" them is problematic. However, reporting actual events

or to a regulatory authority.[19]

State regulatory commissions are fully engaged in crafting appropriate safeguards around the OSS access parity obligations. In their oversight capacity, they have both the incentive and opportunity to review the parties' negotiated agreements and arbitration decisions, as well as to monitor ongoing discussions between ILECs and CLECs.[20] There has been no demonstration (other than selected filings from various state proceedings included in the Joint Petitioners' Appendices -- all filed without benefit of the full state record)[21] that the "OSS battle"[22] is not

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allows for an assessment of what is occurring even in the absence of performance measurements.

[19] It has been U S WEST's experience that State Commissions do not particularly want to have factual performance data provided directly to them in the first instance, being satisfied that affected parties have the information necessary to allow them to discern whether discrimination is taking place. The State Commissions, then, remain available to adjudicate issues associated with any perceived discrimination. However, providing the information directly to regulatory authorities would be another model.

[20] Even after a negotiation has been completed, the parties continue to talk and address issues that were contentious or that were left unresolved. For example, U S WEST continues to work with CLECs on OSS interfaces, including both their design and deployment. In many cases, these ongoing negotiations will result in electronic interfaces being deployed that go beyond those that are currently utilized by U S WEST (i.e., go beyond that necessary to achieve "parity"), reflecting and accommodating the idiosyncratic business needs of the affected CLECs. However, such ongoing negotiations can also result in changes in design or direction, which adds delay to the deployment schedule.

[21] Despite the voluminous Appendices provided by Joint Petitioners, there is more to the state proceedings "record" on the issue of OSS access than was provided by Joint Petitioners. There are, for example, negotiated agreements and arbitrators' decisions. There are also State Commission orders and appellate filings. It would be entirely inappropriate for the Commission to "conclude," based on Joint Petitioners' Appendices, that the issue of OSS access is not being fully and fairly addressed at the state level.

[22] Petition at 2.

being appropriately addressed and resolved at the state level.[23] And, there is no reason to believe that the states are incapable of being at least the initial arbiter of the "clarity and finality"[24] that Joint Petitioners believe needs to be brought to bear in resolving the battle. There are ample remedies and time to craft future remedies should reporting evidence demonstrate deficiencies in the area of parity implementations.

To ascertain parity or nondiscriminatory access to OSSs, one needs only information about actions, transactions, and events, with some type of time associated with the action, transaction or event. Except for Joint Petitioners' single remedy around "disclosure," Joint Petitioners' requests for relief demonstrate that

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[23] Apparently, because U S WEST filed a Petition for Waiver (filed Dec. 11, 1996, CC Docket Nos. 96-98 and 95-185) with the Commission with respect to our OSS implementation obligations, Joint Petitioners believe it appropriate to characterize U S WEST as "making less progress in meeting the OSS requirements than any other ILEC." Id. at 83. While Joint Petitioners' characterization spared U S WEST from having state testimony from across our region added to the already voluminous (and burdensome) Appendices filed by Joint Petitioners, we take issue with their characterization. To the best of our ability to determine, through both personal knowledge and public presentations (such as submissions in the OSS forum), U S WEST is no better or worse than other ILECs in the area of OSS implementation. Whether we are one or the other depends on the specific OSS and function being addressed.

Furthermore, Joint Petitioners erroneously assert that the Commission rejected U S WEST's Petition for Waiver when it adopted its Second Order on Reconsideration. Id. In fact, the Commission has not yet acted on U S WEST's Petition for Waiver. In its Second Order on Reconsideration, the Commission denied petitions for reconsideration of Sprint and the Local Exchange Carrier Coalition and declined to extend the January 1, 1997 compliance date. In that same Order, the Commission announced its position on enforcement of the OSS obligation (see note 6, supra). Whether U S WEST's S WEST's Waiver has not been acted upon specifically as the result of this "good faith" non-enforcement position or for some other reason is not known.

[24] Petition at 2.

they are not after information. Rather, they are after affirmative, pre-determined service quality measurements or cycle times that define when an action, transaction or event must occur and will be considered "compliant" with the Commission's existing OSS mandates. This is not a parity standard; this is a "fully-functional" OSS standard, as defined by one party -- the Joint Petitioners.

III. "PARITY" NECESSARILY IMPLIES OSS ACCESS TO LEGACY SYSTEMS, WITH THOSE MODIFICATIONS NECESSARY TO ALLOW SUCH ACCESS, NOT THE CREATION OF SUBSTANTIALLY "HIGHER QUALITY" OSSs

The Commission's current parity obligation certainly requires that ILECs create efficient and effective access to their legacy systems. The fact of creating this access requires modifications to existing interfaces and, generally, the creation of new interfaces that will allow for access to the OSS and the retrieval of information from the OSSs. For the most part, these interfaces will be based on national standards.

The goal is to create efficient and effective interfaces that allow access to information at parity with the ILEC – not interfaces that substantially increase or improve upon the current ILEC's OSS operations. The ILECs' OSSs, while developed for internal use only, have proven over time to be sufficiently robust so as to support a broad range of services and functionalities. So long as third parties have efficient interfaces into the operations of those OSSs, the OSSs themselves do not need to be materially changed or upgraded to meet the Commission's current "parity" requirements.

However, Joint Petitioners arguments for "performance standards" seeks to

dictate the way in which the OSSs themselves must operate and how quickly they must respond. The Petition seeks to extend and expand existing ILEC obligations beyond the determination that nondiscrimination and access parity are being achieved. It seeks Commission aid in fundamentally defining the operations of the systems themselves – not the access to the systems.

In this respect, the Petition goes beyond clarification of existing legal obligations and seeks to have the Commission impose new – and different – obligations on the ILECs. ILECs should be able to fully implement their "parity" obligations *vis-à-vis* their legacy systems before they should be expected to design and implement OSSs that are more sophisticated, more stream-lined and more responsive than their legacy systems.

Undoubtedly, some CLECs may have deployed OSSs that are more sophisticated and faster than some of the existing ILECs' OSSs. As compared with those systems, no doubt, CLECs find some ILECs' systems "slow to respond."[25] Clearly, CLECs would like the ILECs' systems to look like and act like their own systems. However, given the "parity" standard, it is not unreasonable to require carriers to electronically interconnect with existing ILECs' OSSs through the best interfaces currently available.

However, to the extent that ILECs do create, either voluntarily or pursuant to a regulatory mandate, "higher quality" access to OSSs than they provide to themselves or new OSS functionalities that they currently do not utilize

[25] Id. at 6.

themselves, they have a right to be compensated directly from the purchasing CLECs,[26] something the Joint Petitioners too often ignore in their submission.[27]

IV. STATES ARE BEST EQUIPPED TO INITIALLY DETERMINE THE MOST APPROPRIATE METHOD FOR ASSESSING COMPLIANCE WITH THE NONDISCRIMINATION OBLIGATIONS

Joint Petitioners use the various state proceedings, and the testimony filed therein, to create a type of "shot gun" effect with respect to the matter of OSS implementation. As is obvious from the Petition's Appendices, which consist primarily of state testimony on OSS conversions, capabilities, timetables, and comparisons, many states are addressing this issue.

OSS implementation was a part of most negotiations and the subject of many of the arbitration rulings. Obviously, much testimony and cross-testimony is being filed. But none of these facts demonstrates that the situation is in chaos or requires federal intervention. On the contrary, what is occurring is that differences are being taken into account and, where appropriate, accommodated.

Some of that accommodation stems from the fact that current RBOCs' OSSs vary considerably. This causes implementation of "standards" (whether technical or performance) to have variations by necessity. For example, while ILECs interacting

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[26] First Report and Order, 11 FCC Rcd. at 15615 ¶ 225.

[27] Compare, Petition at Appendix A, "Provision of Customer Usage Data" (ILECs shall not charge any fees for recording, rating or transmitting usage data and shall provide the transport facility for transporting data to the CLEC; ILEC shall recover data resulting from errors or omissions (regardless of how caused) at no cost to CLEC); "Miscellaneous Services and Functions" (ILEC shall update the Line Information Data Base ("LIDB") for CLEC subscribers as part of the service order process or provide the CLEC with access to LIDB at no charge; ILEC shall not

with interexchange carriers ("IXC") in an electronic environment currently all use some form of CABS/SECABS and BOS to perform billing, each company maintains different specifications regarding the electronic interface required in the access arrangement, in order to accommodate uniqueness in their systems.

These company differences are not due to some malevolent or anticompetitive intent. Sometimes the idiosyncrasies are due to variations in state regulatory requirements or the differences in ILEC equipment (e.g., switches). However, they most often result from the simple fact that the same development team did not develop all the RBOCs' systems. The differences in systems become even more pronounced when moving beyond the access ordering and billing systems identified above, to the retail OSSs, particularly in the area of maintenance systems.

The State Commissions' resolution of the OSS access issue, like a state's competitive environment and the underlying ILECs' OSSs that operate in that state, have been different. Often these differences reflect the fact that state geographies differ and that competition itself is anticipated to grow at different rates.

Across the range of options, some State Commissions have approved negotiated agreements which contain performance measurements. Still others have either imposed reporting requirements or have heard testimony as to the sufficiency of such reporting for assessing whether discrimination is occurring. Such reporting provides either the affected parties or the Commission itself with the ability to

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charge for storage of CLEC subscriber information; at no charge, ILEC directory covers shall prominently display that CLEC listings are included).

review the "facts" of performance, allows for challenges to the information, and, to the extent the facts demonstrate unwarranted discrimination, the crafting of appropriate remedies.[28]

Regardless of the particulars of the regulatory treatment, the states are the appropriate entities to work out the details associated with OSS access implementation, at least for the time being. If OSS service quality standards are found to be necessary, this responsibility should be left to state regulatory agencies that have responsibility for regulating ILEC provision of local service.[29] This certainly makes sense since the OSSs that are the focal point of the Petition are those necessary to support CLEC provision of local exchange service, either through resale, the purchase (and possible recombination) of unbundled network elements ("UNEs") or through facilities-based operations.[30]

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[28] Reporting on actual outputs clearly empowers an oversight body to determine whether any material discrimination is occurring. Indeed, traditionally, when the Commission has been concerned about discrimination in performance, it has adopted reporting requirements, i.e., reporting of the facts associated with provisioning, installation, maintenance and repair, in order to identify whether carriers are in fact engaging in discriminatory behavior. See In the Matter of Filing and Review of Open Network Architecture Plans, Memorandum Opinion and Order on Reconsideration, 5 FCC Rcd. 3084, 3093 ¶¶ 73-80 (1990). Such reports not only provide *prima facie* evidence of discrimination, but they also provide opportunity for explanation regarding discrete variations and demonstrate that performance levels may vary significantly among telecommunications carriers regardless of any evidence of discrimination.

[29] For the Commission to establish OSS quality of service standards, it would first have to conclude that such standards were necessary. It would then have to actually establish a standard. This regulatory process would be duplicative of ongoing states' efforts and would be ill-advised from both a policy and an administrative perspective.

[30] The Petition focuses its attention on CLECs that are either resellers or purchasers of UNEs, such as local loops. However, facilities-based carriers will also be seeking

While calls for national standards (either system or performance standards) sounds reasonable and enticing (particularly where national or regional carriers are involved), parity obligations do not require the establishment of such standards.[31] Parity requires that CLECs receive access to OSSs on a nondiscriminatory basis with the ILECs. The states are fully equipped to monitor and enforce this regulatory mandate.

V. THE "PERFORMANCE STANDARDS" SOUGHT BY THE JOINT PETITIONERS INCORPORATE BOTH TECHNICAL STANDARDS AND SERVICE QUALITY MEASUREMENTS -- NEITHER SHOULD BE ADOPTED AS NEITHER IS NECESSARY TO DETERMINE PARITY OF ACCESS TO ILECS' OSSs

The Petition uses the phrase "standards" rather loosely, describing everything from the Commission's initial OSS mandate to technical standards to service quality measurements. Sometimes, in referencing "performance" or "service quality standards," Joint Petitioners insert arguments pertaining to "national standards." Often, this reference is to some type of technical capability. In reviewing these portions of the Petition, the Commission must be very careful to distinguish between the creation of standardized interfaces to ILECs' OSSs and

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access to ILECs OSSs for particular purposes. Parity obligations extend to these carriers, as well.

[31] In its Second Order on Reconsideration, the Commission declined to condition the requirement to provide OSS access upon the creation of national standards, as Sprint had requested. 11 FCC Rcd. at 19744-745 ¶ 13. Similarly, the Commission declined to adopt national standards in its recent Order modifying the service quality and infrastructure reporting requirements which were initially adopted in the original price cap proceeding and subsequently reviewed in light of passage of the 1996 Act. See In the Matter of Policy and Rules Concerning Rates for Dominant Carriers and Amendment of Part 61 of the Commission's Rules to Require Quality

service quality measurements for OSSs. U S WEST supports the creation of standardized interfaces to ILECs' OSSs for all types of CLECs, including facilities-based CLECs, and has been an active participant in standards forums.[32] U S WEST is committed to supporting the electronic interfaces which industry standards bodies ultimately adopt.[33] On the other hand, U S WEST opposes the adoption of any technical or performance standards associated with the "internal" operation of ILECs' OSSs.

Standard "interface specifications," by virtue of the consensus process used to create them, address the critical balance between being specific enough to be useful in creating commonality between different companies, and yet being flexible enough to be readily adapted to the varied business and technical environments of the parties. Variations developed within this flexibility do not render the interfaces useless or inefficient. Rather they allow interfacing parties the ability to deal with differences in their local operating environment and still communicate effectively.

The Petitioners, however, are looking to establish uniform "performance measurements" under the guise of "standards." Uniform, ubiquitous performance measurements, while seemingly reasonable, would not accommodate differences in ILECs' systems environments. A certain electronic interface, even if designed to the

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of Service Standards in Local Exchange Carrier Tariffs, CC Docket No. 87-313, AAD 97-28, Memorandum Opinion and Order, FCC 97-168, rel. May 30, 1997 ¶ 65.

[32] Interface standards have been under development for over a year and standards bodies have made significant progress in that time. These efforts were reviewed at the Commission's OSS Forum on May 28-9.

same "technical standard," might perform differently within an ILEC during different times of the day, month or year, and might vary among ILECs by several seconds as a routine matter. Seasonal variations in the performance of systems due to order volumes have a significant impact on the performance of the systems the users experience.[34] While a "nondiscriminatory performance" requirement is not necessarily or adversely affected by individual company differences, individual companies held to absolute "performance standards" objectives could well be adversely affected.

If a uniform performance measurement "standard" were set at the level of "best" systems performance achieved by the ILEC during non-busy periods, the ILEC would in all likelihood be unable to satisfy such a standard during busy periods and could be unfairly penalized. For U S WEST, there are three significant busy periods during the year, and several other less busy periods. These tend to vary by geographic region throughout the country and could not be accounted for in developing a uniform performance standard.

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[33] Many of the State Commission's in U S WEST's service area have also endorsed standardized interfaces via the approval of interconnection agreements that require such interfaces.

[34] Order volumes will differ from ILEC to ILEC, and CLEC to CLEC. These variations in volumes will be influenced by the fact that CLECs will enter the business and introduce additional marketing schemes in different geographic regions and at different times. Yet, despite the criticality of volume information to the implementation of OSS access, CLECs have no enforceable obligation to provide forecasting information from which volume requirements can be reasonably determined. This is an unsatisfactory situation, since volumes greatly impact ordering cycles, as well as cause fluctuations in real-time transaction response time. The combination of a CLEC's business plan and its nondisclosure of its forecasts

Alternatively, if such a "standard" were uniformly set at the nominal performance level attained during these busy periods such that it can be achieved with reasonable effort by the ILEC throughout the year, it would likely be too lax to be meaningful during the rest of the season.[35]

Furthermore, to apply generic performance standards across the nation would either preempt prior or ongoing negotiations and/or state resolutions of the matter or would take the form of being so generic that one has to wonder whether such "standards" would accomplish anything substantive at all. The Commission also must recognize that any attempt to make everything generic through the standards process, such that it could be measured unilaterally, would introduce significant delays into the standards-setting process and deployment of electronic access to OSSs and, therefore, in securing ILEC "compliance" with statutory and Commission's nondiscrimination obligation. In the meantime, both competition and the public interest would suffer.

Finally, "performance standards" can never be analyzed or adopted from the perspective of only one party's interests. There are factors that impact an ILEC's ability to meet any pre-determined performance standard that are beyond its

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could easily drive any ILEC "complying" with mandated performance measurements below the minimum level.

[35] The CLECs have repeatedly argued in negotiations on service quality measures, that the "standard intervals" for service activation are meaningless. For example, if the standard interval for a new line installation were quoted to all customers as five days, but the actual achieved performance were two days on average, the CLECs want U S WEST held accountable for achieving CLEC new line installations at the two-day interval, not the five-day interval. Here, the measure is "parity," not

control and that are specifically within the CLECs' control. CLECs' entry strategies and volume requirements, for example, involve material variables for the successful deployment of OSS access capabilities. Additionally, CLECs often provide insufficient data, which can result in significant reworking of an order and provisioning delays. Any performance standard would, of necessity, have to incorporate a method for accounting for CLECs behavior as well as that of the ILEC.

As of yet, neither industry standards bodies nor individual ILECs have had sufficient opportunity to work through the myriad of issues associated with providing multiple-party access to ILECs' OSSs. While the Commission can provide general direction and encouragement in these efforts, the Commission should recognize that it cannot successfully establish standardized industry interfaces through the rulemaking process. No more could it successfully impose "performance measurements or standards" with respect to non-standardized systems.

VI. ILECS ARE CERTAINLY MOTIVATED TO DEPLOY ELECTRONIC INTERFACES TO THEIR OSSs, PARTICULARLY RBOCS

Joint Petitioners repeatedly question the good faith efforts of U S WEST and other RBOCs to comply with the Commission's January 1, 1997 deadline for providing CLECs with nondiscriminatory access to OSSs. In particular, they assert that ILECs have no incentive to provide nondiscriminatory access to OSSs in order

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standard performance measurements. The same should hold true for systems performance.

to delay CLEC entry into local exchange markets. Joint Petitioners are wrong on both counts.

ILECs have an interest in creating the most efficient access to OSSs possible, as soon as possible, so that costs associated with the access are reduced and kept to a minimum. Thus, ILECs have a substantial incentive to develop application-to-application interfaces that eventually operate without any human intervention.[36] Procedures and systems based on human intervention are exceedingly costly and have a greater potential for error.

Furthermore, the RBOCs have a great incentive to comply with the Commission's OSS requirements in order to gain the right to provide interLATA service -- a very appealing business opportunity for a local exchange company. To enter the interLATA service business, RBOCs must first satisfy the Competitive Checklist requirements in Section 271(c)(2)(B) of the Act, one of which is nondiscriminatory access to OSSs.

Joint Petitioners know that nondiscriminatory access to OSSs is a precondition to RBOC entry into the interLATA service business. As such, Joint Petitioners and other IXCs have every incentive to create a barrier to interLATA entry by claiming that ILECs are failing to provide nondiscriminatory access to

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[36] While telecommunications is one of the most highly mechanized industries in the world, there are still some areas, including OSS access, where manual intervention is either necessary or economical, particularly in the provision of "custom-like" services. Neither the Act nor the First Report and Order require ILECs to eliminate all human intervention in meeting the requirement for nondiscriminatory access to ILECs' OSSs, particularly to the extent that ILECs' internal processes involve manual operations.

OSSs and by arguing for the establishment of performance standards that might not be achievable for years.

The Commission should not allow such a result. It should remain resolute in its determination that "parity" is the standard and that "parity" is what will be assessed. To the extent that such assessment requires reporting of some kind, U S WEST would be willing to provide the Commission with copies of any reports that it makes available to CLECs or to State Commissions with respect to OSS access implementation. From such reports, the Commission would be able to determine whether any untoward discrimination in the area of OSS access is occurring,[37] a finding that it must make prior to the granting of Section 271 relief.

VII. CONCLUSION

U S WEST is very concerned that the volume, and the particularity, of the Joint Petitioners' filing can be read to declare a competitive disaster in the making, requiring urgent Federal action to alleviate the problem. However, if the Commission were to react to the Petition in the same manner in which it formulated the original January 1, 1997, OSS mandate, we foresee significant resource, development and deployment problems.

With respect to that prior mandate, every RBOC has attempted to meet the requirements established by the Commission. But the timeline was impossible. Here as well, a premature ruling regarding technical and performance measures

[37] The Commission might not deem it necessary to require copies of such reports, relying rather on a State Commission's administration of the process in the first instance. Certainly, the Commission could request existing reports at any time or only accumulate the information if it were confronted with a specific complaint.

will similarly cause the RBOCs strictly to focus on compliance, rather than basing OSS development on what is necessary to effect meaningful competition. The RBOCs can well find themselves in another situation where a "we told you to comply" mandate will result in what many CLECs argue is the wrong solution for facilitating competition.

There appears to be no effective way for the Commission to administer the type of processes proposed by Joint Petitioners. The level of specification requested by Joint Petitioners is misleading in its apparent simplicity. But is it not simple. It is a "wish list," where the wishes represent substantial technical and internal compliance problems and where a mandate granting the wishes would clearly delay any finding that RBOCs have successfully achieved electronic OSS interface compliance.

Given that prior filings demonstrate that electronic interfaces to OSSs have been the most misunderstood of all of the interconnection issues in terms of their complexity and achievability, U S WEST urges the Commission to respond cautiously to the current requests for relief. To prematurely overlay additional rigid guidelines in the area of "performance" or "measurement" would only serve to