on whether they are missing repair commitments for CLEC customers more frequently than for their own customers.

D. Billing

LCUG's measurements for billing include two obvious requirements: timeliness of delivery and accuracy of billing records. This information is clearly needed to assure that CLECs can send prompt and accurate bills to their customers.[31]

E. General Measures

LCUG also proposes two general measures needed to assess the availability and responsiveness of ILEC OSSs. First, the ILEC should measure the availability of its OSSs and associated interfaces to CLECs against the availability of the same OSSs to ILEC representatives, to assure that CLECs may make equivalent use of the ILECs support systems.[32] Second, the ILEC should be required to measure the responsiveness of its wholesale representatives to CLEC calls into its provisioning and trouble report centers.[33] Such responsiveness is critical to assure that ILECs are

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[31] Id., p. 32.

[32] Id., p. 25.

[33] Id., p. 30.

providing commercially reasonable support to CLECs that gives them a fair opportunity to compete.[34]

Finally, LCUG suggests some measurements that are designed to determine whether ILECs are providing network performance parity to CLECs in terms of transmission quality, speed of connection, call completion rate and call blockage. All of these basic performance measurements are necessary to assure that CLEC customers receive the same quality of service from the ILEC's network as the ILEC's customers.

F. All ILEC Performance Measurements Must Be Clearly Defined.

The measurement objectives provided by LCUG provide clear definitions of what ILECs should measure and how the measurements should be made. This is critical to assure that the data ILECs provide are accurate.[35] Misapplication or distortion of the relevant definitions can lead to misleading, if not false, results.

Accordingly, the Commission should also adopt a rule requiring that ILECs explain in detail how they performed

[34] LCUG also reasonably suggests measurements that compare the responsiveness of ILEC operators when the ILEC is providing operator services both to CLEC and ILEC customers, based on the time to answer calls placed by customers of both carriers.

[35] See DOJ Michigan Evaluation, pp. A-11-A-12, quoted at n.17 above.

each measurement and certify that, for each required measurement of parity, it used identical parameters to calculate its performance for itself and all CLECs, or to explain the reasons why it did not do so. Otherwise, there is a significant possibility that the results will be invalid.

Finally, the Commission should recognize that LCUG measurements are quantitative and do not address qualitative differences in performance that may have to be dealt with separately. For example, ILEC practices such as sending CLECs unintelligible customer service records, or changing OSS system requirements or business rules without giving CLECs an opportunity to discuss such changes or adequate notice, are other methods of discrimination that must also be considered in complaint or other proceedings.

IV. Swift And Sure Implementation And Enforcement Of Uniform Performance Measurements Is Required By The Act.

A. Interim Reporting Requirements

As the principal agency responsible for establishing rules to ensure compliance with Section 251, the Commission should take the necessary steps to require ILECs to demonstrate compliance with the Act. At best, individual new entrants only have access to partial information on an ILEC's provision of support functions, i.e., the support they themselves receive. CLECs (and the Commission) have no

ability to determine the support that an ILEC provides to its own service representatives or customers. Thus, there is no alternative source for the necessary data. Indeed, the Commission has already found in an analogous context that ILECs are the only parties with the data needed to show compliance with the 1996 Act's nondiscrimination requirements.[36] Accordingly, the Commission should require ILECs themselves to report on their performance.

First, in order to create an inventory of existing data regarding ILECs' current and near-term compliance with Section 251(c), the Commission should require each ILEC immediately to file, and make available to interested parties, an interim report describing:

- all aspects of performance the ILEC currently tracks, and how it measures its performance for itself and for CLECs, and

- all performance measures the ILEC is currently developing, and how it plans to measure such activities for itself and for CLECs.

These are the minimum data necessary, on an interim basis, to determine the current status of ILEC compliance

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[36] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, FCC 96-489, released December 24, 1996, ¶ 242 (ILECs must provide information regarding the Section 272 requirement to provision services nondiscriminatorily to affiliates and CLECs, because in the absence of such a requirement "the information necessary to detect violations of this requirement will be unavailable to unaffiliated parties").

with Section 251(c). They may also reveal some additional aspects of ILEC performance that should be measured.

B. Permanent Reporting Requirements

The Commission should also establish prompt timelines within which ILECs must be able to report on all of the performance measurements that will be required for the long term, to assure that appropriate progress will be made and that the ILECs will be in compliance with Section 251 over the long term. AT&T recommends that ILECs be required to report on the LCUG functional performance measurements identified above no later than January 1, 1998.

Because reporting of ILEC performance will be critical to the ability to monitor -- and the Commission's ability to enforce -- ILEC compliance with the statute's nondiscrimination requirements, ILECs should be required to provide reports monthly. Monthly reports will provide up-to-date information on trends in ILEC behavior that is necessary to assure that discriminatory conditions do not get out of hand and thus preclude the possibility for effective competition during the critical developmental stages of local competition. The Commission may, at some future time, consider reducing the frequency of such reports, but not until competition is firmly rooted throughout an ILEC's operating territory in a state.

In order to assure that ILECs comply with all aspects of their nondiscrimination obligations, each ILEC should be required to report on its performance for itself and for all CLECs as a group. In addition, for any new entrant that requests, the ILEC should be required to provide to that entrant a report regarding its activities in support of the items provided to that individual carrier.[37]

C. Statistical Reliability of Reported Results

It is also essential that the Commission assure that an ILEC's measurements are reliable, especially in cases where the ILEC is required to prove performance levels that are at parity with the performance it provides to itself or its customers. Because ILEC performance reports will inevitably show some variability in the actual results, statistical analysis is required to account for such variations.

In cases where an ILEC is required to demonstrate parity, the ILEC must provide comparative results that show that the performance it delivers to CLECs, both individually and in the aggregate, is at least equal in quality to the performance it delivers to its own (and its affiliates') customers or retail operations. In practice, this means that CLECs have the right to expect actual performance levels that are statistically equivalent to the performance

[37] DOJ Michigan Evaluation, p. A-3.

the ILEC provides to itself, and that the variations in such levels are no more extensive for CLECs than for the ILEC. This is the essential definition of parity and the ultimate proof of nondiscrimination, and it can only be shown through the use of standard statistical analysis.

Performance results can differ either with respect to the average (mean) values of the measure under consideration, or the degree of variability of individual measurement values (most commonly measured by the standard deviation), or both. Thus, measurements of both are necessary to determine whether ILECs are providing nondiscriminatory support processes. The average for a group of measurements is the single value that mathematically best represents the results experienced by the entire group being considered. For example, the mean service provisioning interval for a CLEC resale POTS customer may be 3.2 days and the mean provisioning interval for ILEC retail POTS customers might be 2.7 days. However, the interval experienced by any individual customer of a CLEC or ILEC may be either greater or less than these mean values. In contrast, the standard deviation measures the extent to which each individual observation differs from the mean value.

Using the provisioning interval example described above, the standard deviation for CLEC customers may be one

day, and the standard deviation for ILEC customers may 0.5 days. Therefore, based on these calculations, one cannot automatically conclude that identical average results indicate parity, because the underlying data for one average may show substantially greater variation than data for a second group having the identical average result. Similarly, a lack of parity cannot automatically be established because the two mean results differ. Each group's average may be the result of widely varying individual results, many of which may be found in both sets of observations.

Statistical testing procedures allow for meaningful comparisons between the two sets of results. They enable an observer to determine whether differences in reported results are important (or significant), based upon a pre-established tolerance for the risk of drawing an erroneous conclusion, i.e., that two things are the same (or different) when, in fact, they are not.[38] Given the importance of performance measures to a determination of whether an ILEC is complying with its Section 251(c)

[38] For example, well known and accepted statistical procedures can be defined so that the user of the test will have a 95% probability of being "right" that the two compared results are the same or different. Similarly, there are established statistical procedures for determining the probability of whether two average results are the same or not.

obligations, the Commission should require ILEC reports to include standard statistical analyses of the reported data. This is the only way the Commission can assure that results reporting parity performance are reliable.[39]

D. Audits of ILEC Report and Performance Measurement Systems

It is also essential to assure the integrity of ILEC reports and measurement processes. Thus, the ILECs' performance reporting systems should be periodically audited to ensure they are functioning properly. Two types of audits are necessary. First, ILECs should be required to conduct (and pay for) semiannual independent audits, which would be submitted to the Commission and PUC and made available for public inspection.[40] Second, CLECs should be given the right to conduct their own audits upon reasonable notice to an ILEC. CLEC audits not requiring additional approval (such as specific audits conducted in connection with a complaint proceeding) could appropriately be limited to a specific number, e.g., no more than one per quarter.

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[39] Similar statistical analysis of ILEC performance data will also be necessary to determine whether reported results for CLECs are consistent with pre-established benchmarks.

[40] See Part 64.904 of the Commission's Rules, which requires LECs to submit annual independent audits to assure compliance with the Commission's well-established cost allocation rules. Given the critical importance of ILEC OSSs to the emergence of local competition, audits of the ILECs' OSS measurement and reporting processes during the start-up period should be more frequent.

ILECs could also be permitted to require that CLECs coordinate their requests, so that the ILEC's day-to-day operations are not unduly interrupted. In all events, however, ILECs should be required to retain all information underlying their performance reports for at least two years so that such information is available for use in enforcement proceedings.

E. Remedies for ILEC Non-Performance

Appropriate remedies must also be available to new entrants who do not receive nondiscriminatory Section 251(c) offerings and associated support processes from ILECs. As the Commission considers appropriate remedies, however, AT&T does not recommend that it adopt any of the existing state models, because, although valuable and important, the existing state rules generally are not focused on Section 251(c)'s nondiscrimination requirements, and are otherwise inadequate to ensure ILECs comply with their obligation to provide nondiscriminatory access to their Section 251(c) offerings and related support processes.

For example, the recent rules adopted by the Ohio PUC are intended to establish "objectives for minimum levels of service to be provided by each LEC."[41] These measures focus on all LECs' provision of service to end users, not whether

[41] Ohio Administrative Code Chapter 4901:1-5, as amended effective July 7, 1997.

an ILEC has provided CLECs with nondiscriminatory access to its Section 251(c) offerings and associated OSSs. Thus, the liabilities for failure to comply with these rules are not aimed at remediating the effects of a lack of parity. Other state remedies have typically been developed in the context of individually negotiated agreements and/or arbitrations under the 1996 Act. Accordingly, they had to be established in the compressed timeframes required by the Act. Considering the wide range of issues that needed to be addressed during that time, remedies for failure to comply with the terms of specific performance objectives were often given little, if any consideration. Furthermore, those remedies typically were not focused on measures of nondiscrimination (or parity) for CLECs but on whether the ILEC's performance failed to meet specific benchmarks. Here, in contrast, the Petition asks the Commission to act in the context of a rulemaking specifically intended to enforce the nondiscrimination requirements of Section 251(c), and in which all interested parties may participate.

Finally, state and contractual remedies are often based on a percentage of the ILEC's charges for specific network elements or services or related support functions, and are too low to provide an effective incentive for the ILECs to act in a nondiscriminatory manner. For example, SNET proposed that performance penalties should range from only

.05% to .10% of the total CLEC recurring charge for a UNE or a resale service, and that no penalty should apply until after it fails to meet the performance standard for three successive months. These proposals clearly do not provide significant incentives for an ILEC to comply with Section 251(c).

AT&T urges the Commission not to focus on monetary remedies, many of which are already available through the Section 208 complaint process and the Commission's power to impose civil fines under Title V of the Act.[42] Rather, the Commission should focus on devising forms of injunctive relief that will provide ILECs with appropriate incentives to comply with the 1996 Act. Section 271(d)(6) provides a clear statutory basis for applying injunctive measures against BOCs, up to and including suspension or revocation of a BOC's in-region interLATA authority.[43] The Commission

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[42] In addition to any civil penalties, and in lieu of filing formal complaints with the Commission, new entrants may, of course, sue for damages in court under the Communications Act and other applicable laws, including, but not limited to, federal and state antitrust laws and state unfair practices laws.

[43] That section provides: "If at any time after the approval of an application under paragraph (3), the Commission determines that a Bell operating company has ceased to meet any of the conditions required for such approval, the Commission may, after notice and an opportunity for hearing (i) issue an order to such company to correct the deficiency; (ii) impose a penalty on such company pursuant to title V; or (iii) suspend or revoke such approval."

may also impose similar limitations on non-BOC ILECs. The Commission has authority, pursuant to sections 312 and 154(i), to enjoin an ILEC from acquiring new customers or offering additional lines to existing customers for a period of time sufficient to ensure that a carrier will not obtain economic benefits from anticompetitive acts that would outweigh the negative impact of monetary penalties.[44] The threat of such injunctive relief would remove much of the incentive that an ILEC might otherwise have to undermine its competitors' ability to utilize its OSSs.

To the extent the Commission also wishes to consider creating additional monetary sanctions in the nature of civil fines or penalties, such sanctions should be as self-executing as possible, preferably based upon the data reported by the ILEC. In addition, to emphasize the importance of compliance, the Commission should establish "multipliers" that it will apply in the event of multiple or repeated failures to conform to the Act's OSS nondiscrimination requirements, as well as for the submission of false or misleading performance data. AT&T suggests that these multipliers be keyed to summary tables

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[44] See United States v. Southwestern Cable Co., 392 U.S. 157, 179-80 (1968) (upholding Commission order prohibiting certain providers of community antenna television service from enrolling new subscribers in areas not served by them as of February 15, 1966, pending hearings).

that are built into the reports.[45] In all events, such remedies should supplement, and not supplant, complaints for damages.

V. The Commission Should Establish Timelines And Procedures That Will Lead To The Prompt Creation And Implementation Of Uniform Technical Standards For OSSs.

The Notice requests comment on whether the Commission should take action regarding technical standards. The Local Competition Order (¶ 527) acknowledges that uniform standards and guidelines for the exchange of information between LEC OSSs would be beneficial, and (¶ 528) "[i]n order to ensure continued progress in establishing national standards," the Commission stated that it would monitor the progress of industry organizations in reaching this goal. AT&T agrees that the adoption and implementation of technical standards is extremely important for the development of effective local competition. As the

[45] Section § 503(b) authorizes fines of up to $100,000 per day on common carriers that "willfully or repeatedly" violate the Communications Act or the Commission's regulations. In order to ensure that ILECs will not conclude that they can profit from anticompetitive acts in spite of monetary penalties, the Commission could specify that each ILEC failure to comply with the reporting requirements, and each ILEC failure to demonstrate in its reports that it is providing nondiscriminatory support processes, may constitute a separate violation. Moreover, this provision authorizes the Commission to treat multiple and repeated failures more seriously than single or isolated failures.

Commission noted, the operational complexity and expense of establishing separate interfaces with each ILEC creates a significant barrier for CLECs that wish to provide service on a regional or national basis.

Standards and guidelines need to be established for three categories: (1) uniform information requirements and business rules, (2) the mapping of the information requirements into standard electronic data formats such as the Electronic Data Interchange (EDI) format, and (3) uniform protocols for the transmission of the information. AT&T believes that such standards and guidelines are best developed through open telecommunications industry forums, where technical experts from all interested parties can share information and reach consensus on the most effective and efficient industry-wide approaches.

The Alliance for Telecommunications Industry Solutions ("ATIS") sponsors a number of committees and forums, such as the Ordering and Billing Forum ("OBF"), the Telecommunications Industry Forum ("TCIF"), and Committee T1, which are already involved in developing the appropriate standards and guidelines for information flows between LEC OSSs for local service. The ATIS forums and committees are especially appropriate for this purpose, because membership on these committees is open, and their participants represent a broad range of businesses in the U.S.

telecommunications industry, including both vendors and carriers. The ATIS committees and forums have worked well in the past in developing guidelines and standards for similar telecommunications issues, such as interexchange access ordering. Carrier members of ATIS committees include CLECs and ILECs of various sizes, and these companies intend to use different approaches to provide (or support) local entry.

Given the prior success of the ATIS committees and forums, AT&T believes that those groups can most effectively address the pressing need for uniform technical standards. However, Commission oversight of these activities is appropriate to assure that the necessary uniform standards are established as soon as possible. Thus, AT&T recommends that the Commission's principal role in this area should be to encourage these industry groups to develop such standards expeditiously and to help the industry resolve any conflicts that may arise. Thus, it would be appropriate for the Commission: (1) to identify, in partnership with the industry, the necessary standards and guidelines that need to be developed; (2) to set target dates for the development of the required standards and guidelines; (3) to monitor the progress of the ATIS forums and committees; (4) when necessary and appropriate, to work with such forums and committees to remove obstacles to the timely completion of

the guidelines and standards; and (5) to set target dates for ILECs' implementation of the industry recommended guidelines and standards. If the target dates for completion and implementation of the guidelines and standards are not met, the Commission may also, as a last resort, gather the industry parties together and attempt to resolve conflicts and develop guidelines and standards and/or implementation schedules under explicit Commission direction.

In order to assure that the industry committees stay on target, the Commission should assign staff personnel to work with the ATIS committees and to attend committee meetings. Further, the ATIS committees should provide periodic reports on their progress, specifically identifying the areas which they are charged to address; the proposed timeframes for addressing each such area; all issues on which agreement has been reached; and all issues for which timely agreement may be in jeopardy, and the reasons for such potential jeopardies. This will enable the Commission to identify potential problem areas as early as possible and help to keep all industry participants on track.

AT&T believes that the principal issues requiring the development of guidelines and standards include all aspects of pre-ordering and the data transport requirements for ordering and provisioning. As part of its monitoring of the

ATIS forums and committees, AT&T recommends that the Commission pay particular attention to the work on these issues.

VI. Any Negotiated Rulemaking Must Be Preceded By Disclosure Of Existing ILEC Performance Data And Conducted Under Very Prescribed Procedures.

The Notice requests comments on whether a negotiated rulemaking would be useful to resolve the issues raised in the Petition and the Notice. AT&T understands that a negotiated rulemaking in this context would call for the affected parties, with the assistance of the Commission, to meet and attempt to reach consensus on rules they propose for adoption. Given the large number of interested parties and the importance of the issues involved, it would probably be very difficult to achieve consensus, especially within the short timeframes necessary.

Nevertheless, to the extent the Commission believes that a negotiated rulemaking is feasible in these circumstances, AT&T would support such a process if it had clearly defined prerequisites, processes and timetables. At a minimum, this would include three requirements. First, the Commission should require ILECs to provide data on their current performance measures and measurement processes in advance of the negotiations. This is needed to form a baseline of currently available information on what ILECs actually do. Second, senior Commission representatives

should participate in all sessions, to help guide the discussion and expedite the parties' efforts to reach consensus. Third, the Commission should provide that all negotiations will be completed within a brief specified period (e.g., 20-30 days), after which the Commission will issue an order covering all matters agreed upon and immediately institute a brief comment and reply cycle on all remaining issues, leading to a decision within 90 days. Such requirements are needed to assure that the negotiations will not be more of a distraction than a help in achieving the congressional goals underlying Section 251(c).

VII. The Proposed Section 251 Rulemaking Does Not Preclude The Commission From Using The LCUG Proposals In A Section 271 Proceeding When A BOC Fails To Provide Adequate Data Regarding Its Performance.

The above discussion demonstrates the urgent need for the Commission to establish uniform performance measurements, so that CLECs will have a meaningful opportunity to enter the local services market. AT&T has also proposed that the Commission use the LCUG measurements (and associated benchmark values) cited in the Petition in connection with certain BOC Section 271 applications. The Commission is clearly permitted to use these LCUG recommendations in a Section 271 proceeding (or in connection with a Section 208 complaint) before it concludes the proposed Section 251(c) proceeding.

In a Section 271 case, for example, BOCs have the burden to prove parity and nondiscrimination.[46] A BOC's failure to provide direct evidence of parity on all support services issues should thus cause an application to be rejected. However, the LCUG measures and benchmarks proposed by CLECs give the Commission (and individual BOCs) a temporary way around the BOC's failure to prove its case. The Commission may deem that a BOC's proven reliable conformance with the LCUG benchmarks is a reasonable surrogate for parity, at least for the short term, thus providing an applicant BOC a "safe haven" until the Commission's general rules pursuant to Section 251(c) become effective.

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[46] Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Oklahoma, CC Docket No. 97-121, Memorandum Opinion and Order, FCC 97-228, released June 26, 1997, ¶ 66 (Section 271 application denied because "SBC has not demonstrated on this record" that it has met the statutory requirements).

Conclusion

For the reasons stated above, the Commission should promptly initiate a proceeding to establish rules that implement the nondiscrimination requirements of Section 251(c) as they relate to OSSs and other ILEC support services and adopt rules consistent with those suggested by AT&T in these comments.

Respectfully submitted,

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