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

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98 RM-9101

COMMENTS IN SUPPORT OF LCI-COMPTEL'S PETITION FOR EXPEDITED RULEMAKING BY THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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SUMMARY

The ultimate success of the three possible ways in which potential competitors can enter local telecommunications markets -- construction of a wholly separate network, use of unbundled elements, and resale[1] -- is largely dependent on the manner in which the incumbent local exchange companies ("ILECs") implement the requirements of the Commission's Local Competition Order (CC Docket No. 96-98, decided August 8, 1996). Even new entrants that build their own facilities still need to exchange switched traffic with incumbents, handle E911 calls, port numbers, etc.[2] And competitive local exchange carriers ("CLECs") that choose to use unbundled network elements ("UNEs") or resale are even more dependent on the quality, quantity and speed with which the ILECs carry out their obligations.

Competition will only effectively benefit the public when the differences discerned by consumers between CLEC and ILEC services are solely the result of factors within the control of each, and not the result of a ILEC's asymmetric provisioning of

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[1] See DOJ's Evaluation of Ameritech's Section 271 application for Michigan in CC Docket No. 97-137 at 30.

[2] See 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, released June 26, 1997, at ¶ 42 (finding "improbable" the existence of a competitor serving customers over a wholly separate network without the existence of an interconnection agreement).

the same function to itself and its competitor.[3] The simple truth is that local competition can never become effective if ILECs are free to delay, dilute, and degrade the functions they provide to their potential competitors without any fear of the consequences. And the only way they can be prevented from doing exactly this is through the implementation of comprehensive, uniform performance measurements, which form the basis for performance standards (standards which could be legally enforced as "safe harbors" under Section 271, as explained below), and accompanied by effective remedies for violations.

The LCI-CompTel Petition for Expedited Rulemaking provides a timely and appropriate opportunity for the Commission to take on this critical task. LCI and CompTel have identified and defined several performance measurements and standards that would greatly assist reseller entrants, and also provide considerable assistance to new entrants which utilize unbundled elements such as unbundled loops. As described below, ALTS supports LCI-CompTel's petition, and amplifies the manner in which the petition could be implemented to also serve the needs of facilities-based new entrants.

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[3] See Common Carrier Bureau Forum On OSS, transcript of May 28, 1997, at 91: "We want to see a situation in which the competitor's ability to sign up customers is a function of the quality of the service that they offer, and the price that they offer, and how good they are in the marketplace, and not have a situation where the entrants are constrained because even though customers would like to have their service, the order can't be processed fast enough" (remarks of Donald Russell).

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COMMENTS IN SUPPORT OF LCI-COMPTEL'S PETITION FOR EXPEDITED RULEMAKING BY THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

Pursuant to the Public Notice released June 10, 1997 (DA No. 97-1211), the Association for Local Telecommunications Services ("ALTS") hereby files its comments in support of LCI-CompTel's petition for expedited rulemaking in the above proceeding.

I. THE FCC SHOULD ADOPT UNIFORM PERFORMANCE MEASUREMENTS APPLICABLE TO ALL CLASS A ILECS, AND THEREBY GAIN HARD EVIDENCE ABOUT EACH ILEC'S COMPLIANCE WITH THE PRO-COMPETITIVE DUTIES IMPOSED BY THE TELECOMMUNICATIONS ACT OF 1996.

The old Bell system had a saying: "If you can measure it, you can manage it." The same wisdom applies to the issue raised by the LCI-CompTel petition: how to assure that ILECs properly discharge their obligations under the Local Competition Order. As described below, the twin issues of compliance reporting and compliance enforcement are now ripe for Commission action.

A. The Commission Has Already Acknowledged the Need for Compliance Reporting and Compliance Enforcement.

The comments filed by ALTS and several other parties in the Local Competition Order, CC Docket No. 96-98, urged the Commission to find that Section 251 entitles new entrants to negotiate for performance measures and for non-performance penalties (ALTS comments filed May 16, 1996, at 27).[4] The Commission also acknowledged the desirability of performance mechanisms, but concluded it lacked a record at that time which would permit it to determine appropriate measures (Local Competition Order at ¶ 310). The Commission also recognized the desirability of requiring ILECs to report upon their response to CLEC requests for functionalities, and promised to take up the issue at some future point (id. at ¶ 311).

B. The Appropriate Time for the Commission to Take Up the Issues of ILEC Reporting and Compliance Is Now.

Now that almost a year and one-half of experience has been gained under the Telecommunications Act of 1996, there is no question that the Commission should promptly take up the issues of how to measure and enforce ILEC compliance with its Local Competition Regulations. Only quantitative measurements provide the focused analytic tools which permit careful inquiry into ILEC interconnection performance.[5]

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[4] "There is nothing novel about the notion that a commercial agreement should contain enforcement mechanisms which can make judicial enforcement less likely" (id. at 9).

[5] Compare the Commission's reliance on statistical analysis (continued...)

The benefits of quantitative performance reporting on a uniform basis are well known, and clearly applicable to the present circumstances:

- Trend Data - The use of rigorous definitions to generate quantitative data permits reliable trending of ILEC performance over time. Any time-linked shifts in performance related to in-region entry, changes in senior management, merger approvals, etc., could be easily detected and corrected.

- Industry-Versus-Industry Comparisons - Uniformly consistent data permits comparisons of ILEC compliance behavior on an industry-by-industry basis. Any provisioning of the same functionality to a non-threatening market entrant (e.g., paging companies), compared to more dangerous competitors (such as CLECs offering a full range of competitive services), would be clear evidence of non-compliance.

- Comparisons of Treatment of Individual CLECs - Requiring ILECs to report performance data on a consistent basis would also permit comparisons of how each CLEC is being treated. ALTS does not contend that any CLEC is currently colluding with ILECs in order to help conceal ILEC non-compliance. However, the fact that some CLEC business plans pose a greater threat to ILECs than others creates an incentive for an ILEC, perhaps without the knowledge of the CLEC involved, to generate a good "report card" for the non-threatening CLEC, and wave it around as a defense when it mistreats its more dangerous competitors. CLEC-versus-CLEC performance comparisons would permit the Commission to blow the whistle on this behavior.

- Benchmarking of ILECs to Other ILECs - Perhaps the most valuable aspect of consistent performance data collection would be the ability to compare ILEC compliance performance

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[5](...continued)
of the ILECs' physical collocation tariffs to determine which ILEC practices are illegal in the recently issued Physical Collocation Investigation Order, CC Docket No. 93-162, released June 13, 1997, Appendix C at 1: "This Order makes direct cost disallowances in cases where LECs' monthly direct costs are in excess of the overall LEC direct cost average plus one standard deviation from a particular function and they failed to provide sufficient information to justify these high direct costs."

to the entire universe of ILECs. While the mean average of ILEC performance should never serve as the "passing grade" (or overall ILEC performance would quickly plummet), the existence of ILECs that could consistently provision at higher levels of quality, quantity, and speed than others would dispel claims of "can't be done," absent special circumstances. Similarly, the presence of other ILECs outside the lower end of the bell curve would provide ample demonstration of non-compliance without any need for additional evidence.

- Service-To-Service Comparisons - Uniform performance data would also permit comparisons on a service-to-service basis. This would permit investigations into whether an ILEC's performance of a certain function varies according to the kind of CLEC service it is used to support.

- Uniform Performance Measurements Encourage Standardized OSS Interface Systems - The creation and reliance upon uniform performance measurements increases the incentives among provisioning ILECs and requesting CLECs to standardize the systems used to request, monitor and implement interconnection. While uniform measurements would never by themselves reduce CLEC-ILEC interfaces to a single system, it would clearly create institutional pressures on those CLECs and ILECs that encounter performance problems due to non-standard interfaces to move to a more uniform system.

C. Quantitative Performance Measurements Must Be Uniform for All Class A ILECs in Order to Support Meaningful Data Analysis Beyond a Single Company.

All the benefits of uniform performance data described above rest upon certain basic characteristics of the data collection process. First, the definition of the performance measurement must be sufficiently detailed and unambiguous that no reasonable interpretation (and hopefully no unreasonable interpretation) would permit an ILEC to implement a measurement that could not be properly compared to data collected pursuant to the same measurement for any other ILEC.

Second, the performance date collected by each ILEC should

be made publicly available to the Commission, state agencies, all CLECs, as well as other ILECs, via prompt publication in a standard format on the World Wide Web. By requiring a standard data reporting format, perhaps one of the many popular database or spreadsheet formats, individual ILEC reports could quickly and accurately be assembled and utilized for any of the purposes described above.

Third, all performance reports should be supported by a well-supported and publicly available audit trail. Requiring performance measurements would be of little use without also assuring adequate data integrity.

Fourth, the Commission should impose strict timeliness requirements on the dissemination of data. Properly constructed measurements will hopefully need almost no human "interpretation," so there would be no burden in requiring ILECs to publish the raw data as quickly as possible, and there would be a considerable gain in real time analysis.

D. LCI-CompTel's Petition Provides a Valuable Opportunity to Start the All-Important Process of Ensuring Adequate Performance Measurement Collection.

The performance measurements proposed in LCI-CompTel's petition is an invaluable jump-start for the Commission's task of implementing effective performance measurements. The various measures proposed in the petition for expedited rulemaking each rely on sound statistical approaches that are resistant to manipulation, and can easily be implemented on a uniform basis

for all Class A ILECs. While ALTS points out below that LCI-CompTel's petition does not contain all the measurements needed to insure full protection for all new entrants, in particular new entrants that rely on unbundled network elements, the quantitative focus and sound statistical grounding of the LCI-CompTel petition provides the right start for this important initiative.

II. WHILE THE PERFORMANCE MEASURES PROPOSED BY LCI-COMPTEL PROVIDE AN EXCELLENT STARTING POINT, ADDITIONAL MEASUREMENTS ARE NEEDED TO PROTECT FACILITIES-BASED NEW ENTRANTS.

Specification of performance measurements for resold ILEC services may appear more inviting at the outset than undertaking to create performance measurements for unbundled elements, given that most ILECs already employ measurements for the services they resell that can be utilized with only modest modifications, while the specifications for UNEs may seem unclear.

But it would be a grievous error to treat UNEs as the "poor cousins" of resale when it comes to performance measures, and thereby choose to act quickly on resale measurements while postponing UNE performance measures to another day. The absence of effective UNE performance measures would soon unfairly tilt the competitive playing field against UNE-based competitors if ILECs remained free to discriminate in their provisioning of these functions. As described below, the members of ALTS are working to formulate performance measures that will assure the simultaneous implementation of UNE competition along with resale,

and which, relying upon several of the measures proposed by LCI-CompTel, as well as end user standards which have been promulgated in many states,[6] will not require significant delay or appreciably greater burden.

A. There Are No Theoretical Reasons Why UNE Performance Measurements Should Be Less Attainable, or More Costly, than Resale Performance Measurements.

The basic cost and quality drivers that all effective performance measurements must be designed to capture -- functions such as the speed and accuracy of the dispatch of a field technician, the percentage accuracy of order flow-through, the percentage of order flow-through that occurs without manual intervention, etc. -- can always be made identical as between CLEC and ILEC services if they are sufficiently disaggregated. For example, residential service technicians leave the same garage, and drive the same trucks regardless of whether they have been dispatched to hook up an unbundled loop for a CLEC customer or to install a loop for an ILEC order. Accordingly, any disparities between the provisioning of the same disaggregated function between a CLEC order and an ILEC order is clearly obtainable and obviously critical.

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[6] See the Ohio PUC's adoption on June 26, 1997, of "Minimum Telephone Service Standards" which are "designed to protect consumer interests and encourage local exchange telephone companies to provide uniform, adequate service to their customers during the transition to a competitive environment" (emphasis supplied; Case No. 96-1175-TP-COI).

B. UNE Performance Measurements Must Be Linked to their Associated CLEC End User Requests Rather than Being Treated in Isolation.

A critical distinguishing characteristic for UNE performance measurements compared to resale is the need to "associate" each of the various functionalities -- number portability, E911, white pages listings -- needed to service a specific CLEC end user order along with the underlying order for a unbundled loop. In the case of resale orders, all functionalities come as a package automatically. But almost no facilities-based CLEC orders just an unbundled loop. Usually, it also needs white page listings, E911, interim number portability, etc. Most importantly, it needs to have all of the these functionalities come together accurately and within the same time frame.

When provisioning UNEs, many ILECs feel free to ignore the fact that a CLEC customer needs -- and expects -- the various functionalities provided by the ILEC to come together invisibly. Rather than track performance according to whether all the ILEC-provided functionalities as combined are adequate to meet the CLEC customer's expectations, the ILECs try to analyze UNE compliance in broad categories. But it makes little sense for the ILECs to claim that 90% of unbundled loops are provisioned within the same time as for equivalent ILEC services (an achievement ALTS would welcome for most ILECs, but which is still well below acceptable standards), if half that 90% lacks ported numbers, white pages listings, or E911 service at the time the loop is provisioned.

Potential CLEC end users do not care about the fact that ILEC white page listings are in place for them if they do not have dial tone. To put the matter bluntly, an ILEC could deliver loops, numbers, white page listings, etc., all in the same intervals, quality, and volumes as it provides itself, and still cripple UNE-based new entrants by falling short on "just" one item, perhaps E911, for each and every CLEC customer. Obviously, ILECs cannot be allowed to game their performance in this fashion.

UNE performance measures must permit the statistical correlation of how the ILEC is provisioning all the functions needed for each CLEC order, and also provide CLECs with the ability to track all associated functionalities for a single CLEC end user order on a real time basis, just as most ILECs service their own end users. Thus, performance measurements for facilities-base CLECs must include cumulative measurements that statistically reflect the way in which various UNE requests are "chained" to a single CLEC order.

C. UNE Performance Measurements Cannot Be Limited to OSS or to Interfaces.

As explained above, the functionalities provided by a CLEC in connection with resold services come as a package, so OSS support is a preeminent factor that naturally forms the centerpiece of LCI-CompTel's petition. However, in the case of UNE provisioning, OSS performance is important, but not the only

critical part of an ILEC's performance. Given the ILECs' predilection for treating different UNEs associated with a CLEC end user order as though they bear no relationship at all to one another, it is critically necessary that UNE performance measurements go beyond just OSS to include all of the individual measurements necessary to capture each of the individual UNEs associated with each CLEC order (i.e., loop intervals, interim number portability provisioning, E911, etc.), in addition to the ability to associate and track those UNEs discussed above in Part II.B.

ALTS strongly suspects it is utterly unnecessary for the ILECs to generate the havoc currently created by their disingenuous claim that UNEs are totally unique, and cannot be treated together in logical associated groupings. Most RBOCs are already working at a system that would provision the so-called UNE platform, which is simply the collection of all functionalities needed to provision an end-user service in manner similar to resale.

If automated provisioning with coordinated tracking and reporting is possible as to all the UNE functionalities needed to provision a service (and ALTS has no reason to believe the interexchange carriers will not succeed in obtaining this from the ILECs), then basic software engineering theory strongly suggests the same system should easily be capable of providing the same functionality -- including coordinated tracking and

reporting -- for a subset of the total typical mix of UNEs needed for an equivalent of a resold service, i.e., for the UNEs ordered by ALTS' members. In short, it appears the ILECs are trying to foist an expensive white elephant upon the CLECs when the appropriate solution -- a simple modification of the UNE platform provisioning model -- would provide an efficient and prompt solution.

In addition to applying performance measures to other functionalities in addition to OSS, it is clear that OSS performance measurements cannot be limited to the interface between the ILEC and CLEC. Interface performance is important, but perhaps not as important as the flow through functionality that properly designed OSS interconnections should be able to provide. Flow through functionalities need to be subject to performance measurements as much, if not more, than OSS interfaces themselves.

D. Follow-up Activities by Users of UNEs

In light of the factors set forth in the foregoing discussion, ALTS' members are currently analyzing which additional performance measurements are needed to properly capture ILEC perform on UNE implementation, and will present those measures to the Commission as quickly as possible.

III. THE FCC SHOULD ADOPT PERFORMANCE STANDARDS UNDER THE 1996 ACT FOR EACH PERFORMANCE MEASUREMENT BY MARKING OUT "SAFE HARBORS" PURSUANT TO SECTION 271.

A. Jurisdictional Issues

Implementation of Measurements - The LCI-CompTel request for uniform performance measurements creates no jurisdictional conflict, since this only involves collection of data, and there is plainly an adequate connection between the Commission's Section 251 authority to issue regulations, no matter how narrowly the Eighth Circuit may ultimately construe it, and the Commission's ability to order collection of performance data from interstate carriers (which includes all Class A ILECs). Furthermore, the generation of this data could only serve to benefit state agencies in their various duties.

Implementation of "Safe Harbor" Standards Under Section 271 - In crafting performance standards that build upon the uniform performance measurements proposed herein, the Commission should not, and need not, predict how the Eighth Circuit will rule on the jurisdictional issues now pending before it in order to act on the present petition. Instead, the Commission need only indicate that such standards will serve as "safe harbors" for the purpose of Section 271 compliance, where the extent of the Commission's jurisdiction is not questioned.

Standards for Non-RBOCs - Concerning GTE and other non-RBOC ILECs (or those RBOCs that have received Section 271 authority), ALTS believes the Commission has plenary authority to apply its

Section 271 "safe harbor" performance standards to any facility carrying interstate traffic, which would include virtually every facility currently covered by interconnection agreements.[7] However, ALTS believes that every effort should be made to avoid even the appearance, however unfounded, of any conflict with state jurisdiction in the issuance of performance standards outside the "safe harbor" context under Section 271 mentioned above.

Accordingly, ALTS urges that the Commission make performance standards subject to mandatory bargaining in bona fide negotiations for all interconnection agreements (including existing agreements which any party seeks to open for the purpose

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[7] The citations and authorities in support of the Commission's jurisdiction under Section 251 are extensively discussed in the Local Competition Order at ¶¶ 69-129, and need not be repeated here.

What is important for present purposes is the simple fact that 25% of every unbundled loop, and varying percentages of almost every other UNE ordered by ALTS' members, are currently assigned to the interstate jurisdiction by separations procedures under Part 67. Accordingly, the Commission is fully empowered to set standards governing the manner in which ILECs provision the portion of these facilities which fall with its jurisdiction regardless of how the Eighth Circuit disposes of the Commission's assertion of authority to require TELRIC as a pricing principle (see Section 251(c)(1): "Duty to Negotiate"). However, as noted in the text above, out of a desire to ensure that the setting of performance standards for non-RBOCs is not perceived by states as a jurisdictional intrusion, however incorrect that perception might be, ALTS requests only that performance standards be made required subjects for bona fide negotiations, with the presumption that the Section 271 "safe harbor" standards constitute minimum performance standards for all jurisdictional purposes until the time, if ever, a state decides to set its own standards for the portion of traffic and facilities within its jurisdiction.

of including performance standards), and that the performance standards promulgated as safe harbors under Section 271 be treated as presumptive minimum standards for all jurisdictional purposes. This approach would encompass GTE and other non-RBOC ILECs (including RBOCs that have already received Section 271 permission), but use the same process of state-supervised arbitration and approval that already exists without any intrusion on any state which may wish to set its own performance standards.

B. Legal Standards

Parity (situations where the identical function is provided to a CLEC and a ILEC) -- When an ILEC provides a CLEC with a function that the ILEC also provides to itself in connection with the same end-user service (i.e., in situations where an ILECs provides a CLEC and itself with a function that supports competing ILEC and CLEC end user services), the Commission should create a safe harbor under Section 271 provided the provisioning to the CLEC is at parity with the ILEC's self-provisioning to the ILECs' best customers as determined by the performance measurements, except when the ILEC's performance falls short of regulatory requirements or acknowledged industry standards, in which case parity requires ILEC compliance with the higher of these two alternatives, regardless of how it provisions the function to itself. (As noted in the August 8, 1996, Local Competition Order, CLECs also have the right to request even higher provisioning standards, but at their own expense.)

"Meaningful Opportunity to Compete" (situations where the functions provided to CLEC are not necessarily identical to those the ILEC provisions itself) - As noted above, UNE functions performed for CLECs become identical to those performed for the ILEC itself once they are sufficiently disagregated. Accordingly, the same "parity" standard described above should also be applied to UNE performance measures after they have been properly disagregated.

In the absence of proper UNE performance measures (and ALTS insists that prompt implementation of appropriate UNE performance measures is critical to the success of UNE-based entry), it should be the burden of the ILEC to show that end-user choices among competing ILEC and CLEC services are not being influenced by the ILEC's provisioning of functions to the CLEC.[8] In this regard, the existence of state performance standards is highly valuable. If a state such as Ohio requires Ameritech to install POTS service within in a certain time limit, Ameritech's provisioning of the group of UNEs needed by facilities-based new entrants in order to provision competitive POTS must operate within a range of quality, service and timeliness that permits the new entrants to compete given the standard applicable to the ILEC's provisioning of a similar service.

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[8] See the remarks of D. Russell cited in n. 3 above.

IV. THE COMMISSION SHOULD IMPOSE EFFECTIVE REMEDIES AND PENALTIES FOR ANY VIOLATIONS OF THE SAFE HARBOR PERFORMANCE STANDARDS.

ALTS sought performance standards and penalties in its original Local Competition Order comments filed May 16, 1996, but the Commission declined to adopt such requirements at that time (¶ 310). The LCI-CompTel petition, as well as the comments filed by various ALTS' members, such as Brooks Fiber, in the Michigan and Oklahoma Section 271 proceedings confirm that the time has arrived for prompt and predictable remedies for violations of performance standards.

Experience has demonstrated that fines and forfeitures are institutionally difficult to assess, and provide only a modest deterrent to ILEC behavior. The Commission needs to craft a range of remedies, including a potential punishment linked to the ILECs' motive for disadvantaging their competitors. According to the RBOCs clamoring to enter in-region interLATA service (and as shown in the behavior of GTE), it is the provisioning of vertically-integrated "one stop shopping" that the incumbents fear, and -- after authorization is granted, in the case of the RBOCs --- view also as their best defensive marketing weapon. In appropriate situations, therefore, removal of an ILEC's ability to accept orders for interLATA service (i.e., a moratorium on an ILEC's marketing of one stop shopping), sometimes temporary, sometimes longer, is a necessary and appropriate corrective mechanism.

In creating remedies for ILEC performance violations, the Commission needs to insure that the punishment fits the crime. While precise remedies can only be crafted after the nature of the performance measurements and standards is reasonably set, a possible example is set forth below:

Duration of ILEC Standards Violation

Percent CLEC orders failing standards (0 % – 100 %)	1 hr	6 hrs	12 hrs	24 hrs	1 week
	Notice to CLEC	Notice to CLEC and FCC	Fine	Substantial fine	LD ordering halt
	Notice to CLEC and FCC	Fine	Substantial fine	LD ordering halt	LD Ordering ban
	Fine	Substantial fine	LD ordering halt	LD Ordering ban	
	Substantial fine	LD ordering halt	LD Ordering ban		
	LD ordering halt	LD Ordering ban			
	LD Ordering ban				

CONCLUSION

For the foregoing reasons, ALTS respectfully requests that LCI-CompTel's petition for expedited rulemaking be granted.

Respectfully submitted,

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July 10, 1997

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I hereby certify that the foregoing Comments by the Association for Local Telecommunications Services was served July 10, 1997, on the following persons by First-Class Mail or by hand service, as indicated.

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