RM-9101

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

July 10, 1997

William F. Caton, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: In the matter of Petition for Expedited Ruling Filed by LCI International Telecom Corp. And the Competitive Telecommunications Association

Dear Mr. Caton:

Enclosed for filing please find an original and four copies of "Comments of MCI Telecommunications Corp. To the Petition for Expedited rulemaking Filed by LCI International and the Competitive Telecommunications Association." Also enclosed is an extra copy to be file-stamped and returned.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Jerome L. Epstein

Jerome L. Epstein

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED
JUL 10 1997
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION TO THE PETITION FOR EXPEDITED RULEMAKING FILED BY LCI INTERNATIONAL TELECOM CORP. AND THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

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EXECUTIVE SUMMARY

MCI fully supports the goal of the LCI Petition. Minimum, uniform requirements for measuring and reporting the availability, reliability, timeliness and accuracy of information and services that incumbent local exchange carriers ("ILECs") provide to their competitors in local markets are necessary for effective local competition to develop. These requirements are essential to meet the provisions of the Telecommunications Act and the Commission's implementing regulations requiring ILECs to provide interconnection and access to unbundled elements on reasonable terms, at parity. Local competition will never develop if new entrants are prevented from matching the quality and timeliness of service the incumbents provide to themselves or their customers. Accordingly, MCI proposes that the Commission initiate an expedited negotiated rulemaking to establish rules governing:

1) which Operations Support Systems ("OSS") and related ILEC business functions should be measured;

2) what minimum service quality levels must be met for each of the functions measured;

3) what reports ILECs should be required to file in order to establish, update and enforce minimum service quality levels;

4) what process should be established for monitoring ongoing performance in order to adjust the initial requirements for measurements, performance and reports in the future; and

5) what additional enforcement mechanisms or penalties should the Commission establish in order to encourage ILEC compliance with the minimum requirements for measurements, performance and reporting.

Commission intervention is needed because ILECs have almost uniformly refused to be bound by specific performance measures, service quality levels, and reporting requirements, and

no ILEC has agreed to strict enforcement mechanisms necessary to encourage compliance. Similarly, with very few exceptions, state commissions have been unwilling to impose these requirements on ILECs. In addition, because BOCs will lose what little incentive they now have to cooperate with competitive local exchange carriers ("CLECs") once the BOCs obtain approval to provide in-region long-distance service, it is critical that the Commission ensure that specific requirements are in place for performance measures, service quality levels, reporting, and enforcement before BOCs are given authority to provide in-region long-distance service.

The Commission should require ILECs immediately to produce comprehensive data as to all performance measurements and objectives the ILECs have historically tracked. The Commission should use its subpoena power and provide for discovery by third parties to ensure complete cooperation on the part of the ILECs. Absent production of such data and a clear showing by the ILECs that the functions and measurements proposed by the Local Competition Users Group ("LCUG") are unreasonable, the LCUG recommendations should be adopted as Commission rules.

It is equally important for the Commission to adopt strict rules as to ongoing reports ILECs must file. In order to ensure that ILECs are providing service to CLECs on reasonable, nondiscriminatory terms, ILECs must provide monthly performance reports comparing an ILEC's performance to itself to an ILEC's performance to CLECs (as a group and individually). ILECs should be required to report on all functions proposed by LCUG, as well as the functions included in the expert testimony submitted by the Department of Justice in connection with its evaluation of SBC's section 271 application to provide in-region long-distance service in Oklahoma. These reports must be sufficiently detailed to allow a meaningful determination of

parity and reasonableness, such as by reporting on specific types of customers and geographic areas, rather than aggregating all data. Provision for auditing the reports must also be made.

MCI further proposes that the Commission establish minimum service levels applicable to all ILECs. Minimum service levels are needed because in a given case service provided at parity may not be reasonable. Moreover, if the Commission finds that a particular function ILECs provide to CLECs has no analogue to a function an ILEC has provided for itself, a direct measure of parity may not be possible; in that situation, minimum requirements for reasonable service to CLECs must also be established.

Finally, in order to encourage ILECs to comply with requirements for performance levels and reporting, additional enforcement measures are needed. Existing remedies, which involve lengthy regulatory or judicial proceedings and no certainty of sufficient penalties, do not provide an adequate incentive for ILECs to cooperate with their competitors -- particularly after the carrot of in-region long-distance entry has been removed. State commissions have almost uniformly refused to provide for substantial credits if ILECs fail to abide by required performance levels. It is therefore critical that the Commission adopt strict enforcement mechanisms, such as substantial credits and limits on an ILEC's ability to sign up new long-distance customers, *before* BOCs are granted section 271 authority and lose all incentive to cooperate with CLECs.

MCI does not, however, believe that it is necessary for the Commission to establish technical standards for OSS at this time. MCI believes the Commission should closely monitor the continued progress in standards bodies, and take further action at a later date only if the industry is unable to agree to, or quickly implement, national technical standards for OSS.

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COMMENTS OF MCI TELECOMMUNICATIONS CORP. TO THE PETITION FOR EXPEDITED RULEMAKING FILED BY LCI INTERNATIONAL TELECOM CORP. AND THE COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

In response to the Petition for Expedited Rulemaking concerning performance measures filed by LCI International Telecom Corp. and the Competitive Telecommunications Association (May 30, 1997) ("LCI Petition"), the Commission has asked interested parties to address whether the Commission should initiate the requested proceeding, as well as the scope of any such proceeding.[1] MCI fully supports the goal and intent of the LCI Petition. Effective local competition cannot develop or survive without specific, minimum requirements for measuring and reporting the quality and timeliness of services that incumbent local exchange carriers ("ILECs") must provide to their competitors in local markets pursuant to the Telecommunications Act of 1996. Accordingly, MCI agrees that the Commission should establish a proceeding to establish rules governing:

1) which Operations Support Systems ("OSS") and related ILEC business functions should be measured;

2) what minimum service quality levels must be met for each of the functions measured;

3) what reports ILECs should be required to file in order to establish, update and enforce minimum service quality levels;

4) what process should be established for monitoring ongoing performance in order to modify the initial requirements for measurements, performance and reports in the future; and

5) what additional enforcement mechanisms or penalties should be established in order to encourage ILEC compliance with the minimum requirements for measurements, performance and reporting.

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[1] Public Notice DA No. 97-1211, RM 9101 (June 10, 1997).

Commission intervention is needed because ILECs have generally refused even to agree to specific performance measures, service quality levels, reporting requirements and enforcement mechanisms, let alone met minimum service quality levels.[2] In normal commercial contract negotiations in which there is a choice of suppliers, it is in the interest of a supplier to negotiate performance measurements, reporting and penalties. ILECs, in contrast, have little incentive to impose such requirements on themselves or to agree to any such requirements requested by competitive local exchange carriers ("CLECs"). Moreover, state commissions have largely declined to establish these requirements, even though they are necessary for compliance with sections 251 and 271 of the Telecommunications Act and the Commission's implementing regulations. Commission action is needed to remove the continuing uncertainty CLECs face as to whether they will obtain acceptable performance from their monopoly suppliers.

In order to establish the appropriate scope of this proceeding, it is important first to clarify what is meant by performance measures or measurements, performance levels, and "service quality measurements." There has been considerable confusion in arbitrations and state and federal filings concerning this terminology. Understanding the interrelationship between functions, measurements, performance levels, reporting and enforcement will also be useful in establishing the sequence of the Commission's investigation.

Performance measurements are measurements of various ILEC functions that provide a

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[2] Indeed, despite the passing of the Commission's January 1, 1997 deadline for ILECs to provide OSS on reasonable, nondiscriminatory terms in compliance with the Act and the Commission's implementing regulations, *see* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order (rel. Aug. 8, 1996) ("Local Competition Order"), ¶¶ 316, 516-17, 525; Second Order on Reconsideration, CC Docket No. 96-98 (rel. Dec. 13, 1996), no ILEC has done so.

basis for evaluating the *availability, reliability, timeliness and accuracy* of information, services and OSS functionality across all ILEC interfaces and business processes. Exhibit B to LCI's Petition contains performance measurements proposed by the Local Competition Users Group ("LCUG").

What Functions Should be Measured? The LCUG recommendations first identify the *functions* to be measured, *i.e.*, the question of *what* should be measured. Examples are "timeliness of providing pre-ordering information," "orders completed within specified intervals," and "troubles per 100 lines." It is important to note that some performance measurements encompass more than mechanical OSS functions, although they are supported by ILEC OSS capabilities. Thus, for example, the percentage of new service failures per unit of time, the quality of repair, mean time between troubles, and percent dial tone delay[3] are not mechanical OSS functions, but all are crucial to determining whether CLECs are receiving timely and reliable service from ILECs, and ultimately affect service to consumers.[4]

What Are Service Quality Measurements? Once it is established which functions should be measured, it must be determined *how* each function is to be measured, and what *level of performance* should be met. The LCUG document includes proposed "Service Quality

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[3] These examples are taken from the Affidavit of Michael J. Friduss on Behalf of the Department of Justice as part of the Department's Evaluation of SBC's application to provide in-region interLATA service in Oklahoma (CC Docket No. 97-121) (May 16, 1997). As noted below, MCI supports the measurement of all functions identified in Mr. Friduss' affidavit.

[4] In addition to the technical adequacy of physical interfaces, the ILECs' business operations directly affect the quality and timeliness of service provided to CLECs and to end users. Thus, it is the wholesale support systems that connect the business operations of ILECs and CLECs that must be measured to ensure parity.

Measurements" ("SQMs") which address these requirements. For example, the function of order accuracy can be measured with a very simple equation -- number of orders completed without error divided by total number of orders sent. The service or performance level can then be established, such as a requirement that at least 99% of orders be completed without error. Other functions require more complex measurements.[5]

Reporting. The purpose of detailed reports relating to performance measures is two-fold: (i) reports of ILECs' historical performance can assist the Commission in developing the list of functions to be measured and the minimum service levels needed to establish parity, and (ii) ongoing reports are needed to assess ILEC compliance with performance requirements and any adjustments that should be made to minimum service level requirements.

I. PERFORMANCE MEASURES, DETAILED REPORTING, AND ENFORCEMENT MECHANISMS ARE CRITICAL TO ESTABLISHING THE PROVISION OF INTERCONNECTION AND UNBUNDLED ELEMENTS AT PARITY AND ON REASONABLE TERMS.

Having defined performance measures, service levels and reporting, we now explain why it is critical that the Commission develop uniform, minimum standards for each. During the initial development of local competition, as consumers begin to try out new local service providers, it will be critical for CLECs to be able to provide service of at least the same quality, and at least as timely, as that provided by the incumbents. The Commission has recognized that

[5] In the area of maintenance and repair, for example, the time it takes the ILEC to resolve customer troubles must be tracked by type of service or facility (*e.g.*, resold POTS, UNE Platform, Unbundled DS1 loop), type of trouble (out-of-service where no dispatch is required vs. other troubles), and the percentage of customer troubles resolved in less than 2 hours, three hours, etc., so that a mean-time-to-restore can be reported for the ILEC and the CLEC, broken down according to whether a dispatch was required. *See* LCUG SQM Doc., p.9.

CLECs must be able to take advantage of each of the three entry strategies identified in the Act -- resale, construction of new networks, and the purchase of unbundled elements from ILECs. *Local Competition Order*, ¶ 12. ILECs have little or no incentive to cooperate with their competitors' efforts to implement any of these entry strategies. To the contrary, an ILEC acting to protect its monopoly profits will discriminate against, or refuse to cooperate with, its competitors. As entrenched monopolists that control the local loop, all other unbundled elements, and associated functions that CLECs need to provide local service (including OSS), ILECs have a unique ability to discriminate against or otherwise disadvantage CLECs, such as by delaying the provision of loops, resold service, and repairs. Moreover, they can refuse to provide information needed by competitors to sign up new customers, and can impede a CLEC's ability to arrange for a customer's seamless, error-free transition to a new provider.

These concerns are not hypothetical. In California, for example, MCI determined that in one period it was faced with *average* delays of 29 days from the time it submitted resale orders to PacBell to the time the orders were completed.[6] At the time, PacBell had completed only *11%* of MCI's business orders by the committed due date.[7] Local competition will never develop if new entrants are prevented from matching the quality and timeliness of service the incumbents provide to themselves or their customers.

It is for this reason that the Act explicitly requires parity in the provisioning of ILEC services needed by CLECs for interconnection and access to unbundled elements. ILECs must

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[6] *See* Direct Testimony of Loren D. Pfau, *MCI Telecommunications Corp. v. Pacific Bell*, C.96-012-026, at 8 (April 17, 1997) (exhibit A hereto).

[7] *Id.*

provide interconnection "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection," and "on rates, terms and conditions that are just, reasonable, and nondiscriminatory . . .", 47 U.S.C. §§ 251(c)(2)(C) & (D), and must provide nondiscriminatory access to unbundled elements "on rates, terms and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(3). Competitors cannot obtain nondiscriminatory access to ILEC networks on reasonable terms without fully functioning OSS. As the Commission found, OSS is "absolutely necessary" and "essential" to competition. *Local Competition Order,* ¶¶ 521, 522. The Commission further determined that competitors must have access to OSS in essentially the same time and manner as incumbents, *i.e.*, on terms and conditions equal to the terms and conditions the ILEC provides to itself and its customers. *Id.* ¶ 518; 47 C.F.R. §§ 51.311, 51.319(f); *Second Order on Reconsideration*, ¶ 9.

Performance measures, reporting requirements and strict enforcement mechanisms are interrelated requirements that are ineffective unless all are in place. It is difficult to establish initial requirements for parity, and impossible to modify the initial requirements in light of ongoing performance, without regular, sufficiently detailed reports of ILECs' historical and ongoing performance. With very few exceptions, ILECs have refused to provide this information to CLECs; none has provided complete historical data and ongoing reporting in sufficient detail to determine if services are being provided to CLECs at parity.

Because the LCUG members have little historical experience with the local functions ILECs have historically provided, the SQMs proposed by LCUG represent the best business expertise of the LCUG membership absent empirical ILEC performance and measurement data.

Thus, as stated in the introduction to the LCUG SQM document:

> The service quality measurement (SQM) goal was difficult to set because the group lacked historical trended data from the ILECs. The ILECs have been reluctant to share current performance over the past 12-18 months. The goals were drawn from the best of class and/or good business practices. The SQM goal may change as the ILECs start sharing historical as well as actually self-reporting data . . .

LCI Petition, Exhibit B, at 3. For this reason, the Commission must insist at the outset of this proceeding on the production of comprehensive historical data from the ILECs as to all performance measurements and performance objectives the ILECs have historically maintained, whether for purposes of state or federal regulations, internal audits, employee evaluations, or otherwise. Absent such data and a clear showing by the ILECs that any particular SQM proposed by LCUG is unreasonable, MCI submits that the functions and SQMs listed in the LCUG document should be adopted as Commission rules. MCI also supports the measurement of the functions included in the affidavit of Michael J. Friduss on behalf of the Department of Justice (*see* n.3, above). As the Department concluded in its evaluation of SBC's section 271 application, an ILEC's refusal to agree to a complete set of performance measures "would substantially undermine competitors' and regulators' ability to determine performance parity and adequacy either before or after interLATA entry." DOJ Eval., *supra* n.3, at 60-61.

Once it is determined what functions ILECs must measure, the ILECs should be required to provide monthly reports of all required measurements. Consistent with the Commission's rules requiring parity of OSS on the basis of an ILEC's service to itself and to its customers (*Local Competition Order*, ¶ 315; *Second Order on Reconsideration*, ¶ 9), the ILEC reports should include, and separately report, measures of: (i) ILEC performance to its affiliates or

itself; (ii) ILEC performance to end-user customers; and (iii) ILEC performance to CLECs as a group. These reports would be useful not only to CLECs that might need to pursue enforcement actions to ensure ILEC compliance, but could also be evaluated by the Commission periodically, or at the request of an interested party, in order to update or adjust the minimum service requirements as needed. In addition to these reports, which would be filed in the public record, ILECs should be required to report to each CLEC performance as to that CLEC. The CLEC-specific reports would not be filed in the public record, but would permit individual CLECs to determine if they were being discriminated against as compared to other CLECs.

In order to ensure parity, the Commission should specify the level of detail to be reported for the particular function being measured. If, for example, a service level were established requiring an ILEC to provision a loop in 3 days or less 95% of the time, a report simply showing that the ILEC had met that service level in the aggregate, for all its customers, would not necessarily establish that loops were being provided at parity. The ILEC may have met the required level by provisioning loops to its own customers in one day, but to CLECs in three days. Thus, at a minimum, reports must separate an ILEC's performance to itself, affiliates, and end-users from performance to CLECs. Similarly, aggregating data on performance in rural areas with data on large business customers in urban areas, or aggregating data on orders for complex business services with data on POTS orders, will produce essentially meaningless averages. Reports must be broken out by type of customer, location, and type of order as required to demonstrate compliance with a particular SQM. Finally, provision should be made for periodic auditing of the ILEC reports by independent auditors and by CLECs to ensure that ILECs are using appropriate methodologies and are accurately reporting the required

measurements.

II. ILECS SHOULD BE REQUIRED TO MEET MINIMUM LEVELS OF SERVICE TO CLECS REGARDLESS OF PARITY.

It is conceivable that some measures of ILEC-to-CLEC performance will not be comparable to functions an ILEC performs for itself. Although the Commission should view with skepticism ILEC claims that functions such as provisioning a loop cannot be compared to *any* functions historically performed by ILECs, some ILEC-to-CLEC functions may not lend themselves to ready comparison with historical ILEC functions. That a determination of parity may not be possible in such a case does not diminish the importance of measuring ILEC performance to CLECs, as the Act also requires ILECs to provide interconnection and access to unbundled elements on *reasonable* terms. 47 U.S.C. §§ 251(c)(2) & (3). It is not reasonable, for example, for an ILEC to take 20 or more days to provision a loop to a CLEC, whether or not provisioning a loop can be compared to a pre-existing ILEC function.

Moreover, even where there is no dispute that a measurement of parity is possible, in some cases parity may be unreasonable. Using the example above, it would be little solace to a CLEC or its customer to learn that the ILEC in fact provisions loops to itself in 20 days or longer; a 20-day delay for a loop is unreasonable even if it matches the ILEC's own performance. Indeed, an ILEC might choose to concentrate its efforts on a particular segment of the market, allowing its performance to deteriorate for other segments (which might coincide with segments CLECs wish to serve). Whether an ILEC's inferior service is the result of proper or improper motives, CLECs should not be subjected to the use of inferior service levels as a benchmark. Inferior ILEC service to CLECs will also have obvious consequences on the quality and

timeliness of service ultimately provided to consumers. Accordingly, MCI proposes that the Commission undertake to establish minimum performance levels for services ILECs provide to CLECs, using the ILECs' historical and ongoing reports. The level of ILEC-to-CLEC performance needed to establish parity may well be greater than this minimum standard of reasonable service, and may differ by ILEC, but a minimum baseline level of performance should apply to all ILECs.

III. THE COMMISSION SHOULD ESTABLISH ADDITIONAL ENFORCEMENT MECHANISMS AND PENALTIES.

MCI does not propose that the Commission displace existing remedies with uniform rules for enforcement of performance levels. Using the ILEC reports described above, CLECs would continue to be free to pursue any existing regulatory, judicial and contractual remedies for unacceptable ILEC performance (to the limited extent that any contracts provide for meaningful remedies).[8] The ILECs are fully aware, however, that in the early stages of local competition, a new entrant who provides inferior service will quickly lose customers and suffer injury to its reputation. The prospect of having to spend a few thousand dollars in penalties for providing unacceptable service to a CLEC would hardly outweigh the benefits to an ILEC of retaining customers or damaging the reputation of its competitor. Such a penalty would be viewed as an insignificant fixed cost -- a fraction of an advertising budget. Without more significant sanctions, ILECs will all too gladly accept a slap on the wrist as the price for thwarting competition. MCI submits that the Commission should establish penalties in addition to those

[8] As noted below, nearly all states declined to impose credits for ILEC violation of parity requirements.

already available in order to give ILECs the appropriate incentive to provide service to CLECs on reasonable, nondiscriminatory terms.

The Commission might consider, for example, substantial credits that ILECs would have to pay to CLECs for failing to meet performance levels. These credits must not be the equivalent of liquidated damages, which could jeopardize the ability of CLECs to seek any and all remedies available at law. Credits could be increased based on the number of violations or the degree of divergence from the parity levels. However, even a credit of tens of thousands of dollars will not by itself deter ILECs from providing unacceptable service to competitors.

Thus, in addition to substantial per-incident credits and the possibility of other damages at law, the Commission should consider restrictions on ILECs' ability to sign up new long-distance customers depending on the degree to which the ILEC failed to meet parity requirements or minimum service levels. Such penalties would likely be far more effective than even a high fixed cost, and would discourage BOCs from "backsliding" once they are granted section 271 authority to provide in-region long-distance service. Because BOCs will have every incentive to reduce the quality and timeliness of service to CLECs once they are granted section 271 authority, it is critical that strict enforcement mechanisms be in place *before* the BOCs are permitted to provide in-region long-distance service.

Commission action is particularly needed as it relates to additional penalties because nearly all states have refused to impose credits, let alone enforcement mechanisms of any type. State commissions typically leave it for the parties to enforce generic requirements of "parity" using unspecified avenues such as regulatory proceedings or litigation. The Kentucky Public Service Commission, for example, rejected MCI's request for performance-measurement

requirements, concluding:

> The Commission finds that, as BellSouth is required to provide the same quality of service to MCI as it provides to itself, and since BellSouth has agreed to do so, there does not appear to be any reason to assume that BellSouth will not in good faith comply with this requirement. Consequently, specific certification, assurance, and performance requirements are unnecessary. Should problems arise regarding the quality of service provided, MCI may of course bring the matter to the Commission's attention.[9]

Some states have found that they lack authority under applicable state law to order credits.[10] This suggests even more strongly that Commission action is needed on enforcement mechanisms to pre-empt any such state requirements. Without automatic, significant per-incident credits (together with the prospect of damages at law and harm to an ILEC's reputation), and restrictions on expansion of the ILEC's customer base, ILECs will only too readily submit to lengthy regulatory complaint processes and uncertain penalties as the price for retaining customers and impeding competition.

IV. THE COMMISSION SHOULD ESTABLISH A NEGOTIATED RULEMAKING WITH STRICT DEADLINES AND SHOULD NOT CONSIDER TECHNICAL OSS STANDARDS AT THIS TIME.

It is important that the Commission expeditiously establish performance measures, reporting requirements and penalties so that MCI and other CLECs can bring competition to

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[9] Order of Dec. 20, 1996, at 24-25, *Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with BellSouth Telecommunications, Inc. Concerning Interconnection and Resale Under the Telecommunications Act of 1996* (Kentucky PSC, Case No. 96-431) (attached hereto as Ex. B).

[10] *See* Final Order Approving Arbitration Agreement Between MCI Telecommunications Corporation, MCIMetro Access Transmission Services, Inc. and BellSouth Telecommunications, Inc., at 34-36, *Petitions by AT&T Communications of the Southern States, Inc., MCI Telecommunications Corp., et al.* (Florida PSC, Docket No. 960833-TP) (March 21, 1997) (attached hereto as Ex. C).

local markets as soon as possible. Based on the ILECs' arguments against performance measures and reports in state proceedings, MCI believes that an expedited negotiated rulemaking would be useful to flesh out the disputed issues. For example, MCI believes that it would be beneficial for a Commission representative or administrative law judge to assess first-hand the credibility of ILEC claims that they have not historically maintained any or all of the relevant performance data, as well as expected ILEC claims that it would not be feasible to modify existing systems to gather and report the data needed to produce the LCUG proposed measurements. The Commission should also use its subpoena power and allow for discovery by interested parties to ensure that ILECs provide *complete* information on historical performance and modifications claimed to be needed to produce required reports, as well as complete data to support any claims that particular ILEC-to-CLEC performance measures have no analogue in functions ILECs have performed for themselves. Non-compliance should be deemed a failure to satisfy section 251 of the Act and the competitive checklist requirements in section 271.

To avoid a protracted negotiated rulemaking, MCI proposes that the Commission establish a strict deadline for completion of the rulemaking proceeding. The Commission should make clear that at the end of that deadline, it will propose and then establish rules regarding measurements, reporting and enforcement, based on the evidence of record, following a very brief period for notice and comment.[11] If ILECs are faced with the requirement that they immediately produce historical performance data and respond fully to specific Commission

[11] The Commission should indicate that it will establish rules based on the strength of the record, and that the absence of empirical data from the ILECs will establish a presumption that the LCUG measurements will be adopted.

inquiries and CLEC discovery requests as to what performance measures they have maintained, and if the ILECs are also faced with the prospect of adoption of the LCUG SQMs absent a clear showing they are unreasonable, MCI expects that the ILECs will be willing to negotiate a solution to many of the outstanding issues. The ILECs cannot, however, be permitted to hide behind unsubstantiated claims that they have never maintained relevant reports, or be permitted to delay the rulemaking. A firm, aggressive deadline should be established for final Commission action on all issues unresolved during the negotiation phase.

In order to avoid a protracted negotiated rulemaking, MCI also suggests that the Commission decline at this time to consider national rules for technical OSS standards. Although national technical standards for OSS are critical to effective competition, MCI is hopeful that technical standards on OSS can be worked out in industry standards bodies on a cooperative basis,[12] before BOCs are granted interLATA authority and completely lose their incentive to cooperate in the standards process. MCI suggests that the Commission monitor the development of OSS standards in the national standards forums,[13] but that the Commission not undertake at this time to develop technical standards for OSS. Such an undertaking at this time would be extremely time-consuming and resource intensive, and may well prove unnecessary if

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[12] *See generally* Affidavit of Samuel King on Behalf of MCI Telecommunications Corp., *Application of Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan* (CC Docket No. 97-137) (noting examples of industry agreement on technical OSS standards).

[13] Section 256(b) of the Act permits the Commission to participate in the development of network interconnectivity standards "by appropriate industry standards-setting organizations." Moreover, the Commission has recognized the progress being made toward developing national technical standards, and has stated that it would consider monitoring the continued progress in standards bodies. *Local Competition Order*, ¶¶ 527-28.

the industry is able to arrive at technical standards on a cooperative basis. At a minimum, allowing the technical standards process to run its course in the near term should greatly narrow the scope of any unresolved technical standards issues that may require Commission action to resolve.[14] In contrast, it is already clear that the industry cannot reach agreement on performance measurements, reporting and enforcement without Commission intervention.

In addition, even after standards are developed by the industry forums, ILECs may refuse to implement the standards (which are now voluntary), or refuse to implement them on a timely basis. MCI fully supports Commission oversight of any difficulties encountered in the implementation of technical OSS standards, but does not believe that such oversight need occur in the context of this rulemaking.

CONCLUSION

For the foregoing reasons, MCI requests that the Commission begin an expedited negotiated rulemaking to establish minimum requirements for performance measures, reporting and enforcement.

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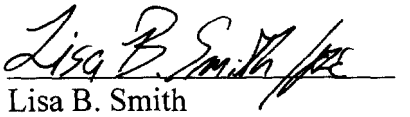
[14] Performance measurements, reporting and enforcement mechanisms can be addressed by the Commission separately from technical standards because technical standards do not currently form the basis for ILEC claims to have met OSS parity requirements. BOCs that have petitioned state commissions and this Commission claiming to have satisfied section 271 of the Act have done so based on their existing OSS, much of which is proprietary and not based on final industry standards. It is therefore essential that the Commission establish a means for measuring ILEC performance and parity without waiting for final technical OSS standards in all areas.

Respectfully submitted,



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Dated: July 10, 1997

CERTIFICATE OF SERVICE

I, Jodie L. Kelley, do hereby certify that copies of the foregoing "Comments of MCI Telecommunications Corp. To the Petition for Expedited Rulemaking Filed by LCI International Telecom Corp. and the Competitive Telecommunications Association" were served via first class mail, postage prepaid, to the following on July 10, 1997.

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

MCI Telecommunications Corporation (U 5011 C) Complainant, vs. Pacific Bell (U 1001 C) and Pacific Bell Communications, Defendants.	C.96-012-026
AT&T Communications of California, Inc., Complainant vs. Pacific Bell, Defendant.	C. 96-12-044
New Telco, L.P., d/b/a Sprint Telecommunications Venture (U 5552 C) and Sprint Communications Company, L.P. (U 5112 C), Complainants, vs. Pacific Bell (U 1001 C), Defendant.	C. 97-02-021

DIRECT TESTIMONY OF LOREN D. PFAU

ON BEHALF OF MCI TELECOMMUNICATIONS CORPORATION

April 17, 1997