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APPENDIX A

SUGGESTED COMMISSION ACTION RELATING TO OSS PERFORMANCE STANDARDS, REPORTING REQUESTS, TECHNICAL STANDARDS AND REMEDIES

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APPENDIX A: SUGGESTED COMMISSION ACTION RELATING TO OSS PERFORMANCE STANDARDS, REPORTING REQUESTS, TECHNICAL STANDARDS AND REMEDIES

Introduction to Suggested Commission Action:

The Need And Legal Basis For Further Action By The Commission Defining With Specificity An ILEC's Duties Under Section 251(C)

On August 8, 1996, the Commission released its First Report and Order (the Order) in CC Docket No. 96-98 (Implementation of the Local Competition Provisions of the Telecommunications Act of 1996). The Order sets out certain requirements that must be met by incumbent local exchange carriers (ILECs) under Section 251(c) of the Telecommunications Act of 1996 (the Act), 47 U.S.C. §§ 151, et seq. Those requirements are intended to enable potential competitive local exchange carriers (CLECs) to enter and compete in local telephone markets. One such requirement, and one that the Commission found to be "absolutely necessary" and "essential" to successful entry and meaningful competition by CLECs, is the ILECs providing nondiscriminatory access to the ILECs' operations support systems (OSSs) by January 1, 1997. [Order ¶¶ 521 & 522]

The OSS of an ILEC is the key element that allows for the pre-ordering, ordering, provisioning and many other vital functions of service (*e.g.*, maintenance and repair, billing, collecting and analyzing traffic data, exercising real-time network control, and forecasting future needs) for customers through electronic interfaces. No matter what else an ILEC might do to comply with the Order and section 251, "it is absolutely necessary for competitive carriers to have access to operations support systems functions in order to successfully enter the local service market." [Order ¶ 521] Thus, as the Commission expressly recognized, "operations support systems functions are essential to the ability of competitors to provide services in a fully

competitive local service market" [Order ¶ 522], and "operational interfaces [to the OSS] are essential to promote viable competitive entry" [Order ¶ 516]. And, if CLECs do not have access to ILECs' OSS functions "in substantially the same time and manner that an incumbent can provide for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing." [Order ¶ 518] "Thus providing nondiscriminatory access to these support systems functions, which would include access to the information such systems contain, is vital to creating opportunities for meaningful competition." [Order ¶ 518] In short, this Commission squarely found (over eleven months ago) that access to an ILEC's OSS functions on a parity basis is a cornerstone to the Act's "requir[ing] telephone companies to open their networks to competition." [Order ¶ 1; *see also* Order ¶¶ 505 & 507 (comments of potential entrants on the importance of nondiscriminatory access to ILECs' OSSs)]

Thus, this Commission clearly recognized the importance of providing access to OSS functionality in its Order when it concluded that:

(i) the ILECs have the burden of showing that they are providing access to OSS functions pursuant to their obligation to offer access to unbundled network elements under section 251(c)(3) as well as their obligation to furnish access on a nondiscriminatory basis to all services made available for resale under section 251(c)(3-4); and

(ii) ILECs "must do so as expeditiously as possible, but in any event no later than January 1, 1997." [Order ¶¶ 316, 516-17, 525]

This Commission did not view meeting the Order's OSS requirements as a far-away, unattainable objective. Instead, it was characterized as one of the "minimum requirements upon which the states may build," and the Commission determined that it was "technically feasible" for ILECs to provide such access by the established deadline. [Order ¶¶ 24, 66, 516, 524]

Subsequently, in its Second Order on Reconsideration (Second Order on Recon), the Commission reaffirmed these conclusions. While noting that it would not take enforcement action against a non-complying ILEC under certain conditions, the Commission reiterated that:

(i) ILECs must demonstrate that they are providing access to OSS on terms and conditions "equal to the terms and conditions on which an incumbent LEC provisions such elements to itself or its customers" [Second Order on Recon ¶ 9];

(ii) the "actual provision" of such access "must be governed by an implementation schedule" [Second Order on Recon ¶ 8]; and

(iii) "incumbent LECs that do not provide access to OSS functions, in accordance with the First Report and Order, are not in full compliance with Section 251" [Second Order on Recon ¶ 11].

In recognition of its earlier finding that "it is technically feasible for incumbent LECs to provide access to OSS functions for unbundling and resale," the Commission denied the ILECs' request to extend the January 1, 1997 deadline for compliance "regarding access to OSS functions," and at the same time assured that it would "monitor closely the progress of industry organizations as they implement the rules adopted in this proceeding" and take "enforcement action where circumstances warranted." [Second Order on Recon ¶¶ 2, 5, 11, 13, 15] The Commission repeated its finding that it is "reasonable to expect that by January 1, 1997, new entrants will be able to compete for end user customers by obtaining nondiscriminatory access to operations support systems functions," and "[t]hus, under our rules, incumbent ILECs must have made modification to their OSS necessary to provide access to OSS functions by January 1, 1997." [Second Order on Recon ¶ 7 (citing Order ¶¶ 524-25)]

The Commission's Orders require "nondiscriminatory" access to OSS, and do not adopt particular performance standards or benchmarks. As used herein, and in this Appendix A and in Appendix B attached hereto, "performance standards" includes (a) measurement categories, (b) default performance intervals, and (c) measurement formulas. As explained more fully in the two Department of Justice Evaluations filed to date commenting upon the Section 271

applications filed by SBC (for Oklahoma) and Ameritech (for Michigan), the ILECs generally have refused to respond to requests for data sufficient to show the objectives they have established for their own internal operations, and actual performance against those objectives.

The concept of parity of OSS is straightforward in the resale context (i.e., one determines whether the ILEC is providing to the CLECs the same OSS functionality on the same terms it supplies to itself;" if the ILEC is so doing, there is parity of access, and if the ILEC is not, there is no parity of access). Unbundled network elements ("UNE") may be problematic in some cases, but the necessity of requiring an ILEC to provide a reasonable and adequate level of OSS access and supporting activities is equally paramount.

We urge the Commission to develop uniform reporting requirements, as outlined here and in greater detail in Appendix B. Once uniform measurement categories are defined and uniform measurement formulas established *see* Appendix B) with appropriate default performance intervals set, requiring the ILECs to report uniform data will provide widely known and well understood tests. This will allow state commissions, this Commission, CLECs and ILECs to "speak the same language" on the subject of performance standards. A uniform system of reporting also will enable the state commissions to take appropriate corrective action where necessary, upon a finding that the ILECs' actual performance intervals are less than reasonable. Nor will a uniform system of measurement categories and measurement formulas create additional burdens on the ILECs. Indeed, a uniform system should lighten their burden, since their back-office and computer tracking systems could be set up to measure the same items, in the same way. Only performance intervals would change by jurisdiction, depending on whether the state public utility commission had taken action to establish reasonable performance intervals. Finally, uniform measurement categories and measurement formulas are essential for

CLECs to set up their back-office systems to track and measure the actual performance of ILECs with which they do business. Many CLECs do business in multiple jurisdictions. Without uniform measurement categories, and measurement formulas, the CLECs burden of amassing information about actual performance by ILECs will be greatly increased. In short, uniform system of measure categories, and measurement formulas, will ease the burden for all concerned -- state commissions, this Commission, ILECs and CLECs.

The establishment of uniform performance standards in both the resale and the UNE contracts, together with the related measurement and reporting requirements, is important to insure that there is a sufficient base from which the CLECs can launch effective local competition. Only in this manner will the Commission fulfill the promise of the 1996 Telecommunications Act that consumers will enjoy the benefits of robust, open competition in the local telecommunications market.

I. SUGGESTED TEXT FOR DRAFT COMMISSION RULES THAT WOULD IMPLEMENT OSS PERFORMANCE STANDARDS

[ALT. A: Providing short period of industry/government negotiations on performance standards prior to final Commission action]

Prior to establishing performance standards by Rule, the Commission will provide a three-week period for one representative from each of the affected parties to meet in an effort to establish agreed upon (a) measurement categories, (b) default performance intervals and (c) measurement formulas. As used herein, "affected parties" means each of the six largest predominantly facilities-based IXCs; each of the four largest facilities-based non-IXC and non-ILEC providers of local telephone service (to be identified by the Common Carrier Bureau of the FCC within five (5) days of entry of this order); the Competitive Telephone Association; the Association for Local Telecommunications Services; each of the ten largest ILECs; and the

United States Telephone Association. Any affected party may choose not to participate in this process. All meetings of the affected parties also shall be attended by five persons appointed by the FCC, and by five persons appointed by the National Association of Regulatory Utility Commissioners ("NARUC") (the "government observers/participants"). The government observers/participants may observe, organize, lead and/or otherwise participate in the meetings as they see fit.

Within ten days of entry of this Order, the representatives of each affected party and of the government observers/participants shall be identified to the Common Carrier Bureau of the Commission, which shall make the identities publicly available. In order to facilitate discussions and prompt action, the affected parties and government observers/participants, no later than eleven days after entry of this order, shall organize themselves into sub-groups which meet separately to consider each of the particular topics set forth below.

Within fifteen days after entry of this Order, the ILECs denominated "affected parties" shall provide to each other and all other participants in the meeting, all data relating to current ILEC performance standards (or information from which such standards might be derived), both for resale and unbundled network elements (including the network platform) in monthly reports from January 1, 1997 forward. Such data shall be accompanied by a full text explanation of the information provided.

Within twenty days after entry of this Order, meetings to develop and agree upon performance standards in the areas of (1) pre-ordering, (2) ordering and provisioning, (3) maintenance and repair, (4) general, (5) billing, (6) operator services and directory assistance, (7) network performance, and (8) interconnection, unbundled network elements and unbundled

network element combinations (the "network platform") shall be commenced. [*See, e.g.*, Order ¶ 523, and Appendix B]

Not later than the forty-eighth day after entry of this Order, (i) the ILEC-affected parties, jointly, and (ii) the non-ILEC-affected parties, jointly, shall each file a document with the Commission reporting on the status and results of the meetings. Each such filing shall set forth (a) all performance standards issues upon which agreement has been reached; (b) all performance standards issues upon which agreement has not been reached; and (c) detailed statements as to each issue for which agreement was not reached, along with any observations desired as to other issues. The NARUC-appointed state government observers/participants shall have the right, within ten days after the parties' filings, jointly to file a document commenting upon the parties' filings, and otherwise reflecting their observations and views.

Upon receipt of these filings, the Commission will assess their content, along with other information then available to it, and will issue a final rule within sixty (60) days establishing performance standards. In so doing, the Commission may accept, or may set aside, all or any part of the performance standards upon which agreement was reached.

[ALT. B: Providing that Commission immediately set performance standards for interstate jurisdiction]

In the NPRM, the Commission required each ILEC to disclose with its comments on the NPRM:

(i) each OSS function for which it has established performance standards for itself, together with appropriate historical data, measurement criteria and methodology and reporting requirements; and

(ii) each OSS function for which it has not established performance standards or reporting requirements for itself.

A. Establishment of performance standards

Effective thirty (30) days after entry of this order, for each of the measurement categories set forth in Appendix B attached hereto, an ILEC shall measure, using the measurement formula set forth in Appendix B, its performance with respect to the provision of access to OSS for itself and its performance with respect to carriers seeking access to its OSS. For purposes of determining whether an ILEC is providing nondiscriminatory access to its OSS, the Commission shall first consider the data included in the monthly reports that it receives from the ILEC pursuant to the reporting requirements established elsewhere in this order. In the absence of information for any particular category regarding an ILEC's performance with respect to its own access to OSS, the Commission shall use the default performance intervals set forth in Appendix B hereto to determine whether the ILEC is providing nondiscriminatory access to its OSS. The measurement categories, default performance intervals and measurement formulas (collectively, the "performance standards") which are hereby adopted by the Commission after consideration of all comments and other information available to it are set forth in Appendix B hereto.

In instances in which an ILEC has provided its data, it is complete, and the provision for default performance intervals is accordingly not applicable, ILECs may be providing parity of access to CLECs to the OSS, but under performance intervals which are less than reasonable. In such instances, state public utility commissions are the appropriate bodies to establish reasonable minimum performance intervals.

B. Requirement of beta testing

To ensure operability and scalability of OSS functions, each ILEC, to carry its burden of demonstrating compliance with the Section 251 OSS access requirements, shall demonstrate

through a beta test that each billing site it operates can process the lesser of (a) 10% of its customer base per month for the regions covered by that billing site, or (b) 20,000 orders per billing site per day. The beta test shall run for not fewer than ninety (90) days and shall include demonstrated OSS access for both resale and unbundled network elements, including the network platform. [*/] The beta tests shall be conducted within ninety (90) days of entry of this order, and shall be repeated at ninety (90) day intervals thereafter, with results reported to the Commission and relevant state public utility commissions, which may take such corrective action under Section IV of these Rules as is appropriate to ensure compliance.

II. SUGGESTED TEXT FOR COMMISSION ORDER REGARDING TECHNICAL STANDARDS

The Commission finds that uniform technical standards are necessary and desirable to achieve true competition in local telephony. The Commission bases this finding upon the industry's experience in long distance technical standards, where, over a period of several years, the standards developed by industry groups have become uniform and stable, and today are capable of transferring in excess of 40 million customers annually among the various current long distance competitors. The goal of the Commission is to encourage/oversee the development, on an expedited basis, of the same quality of uniform software interfaces to transfer local telephony customers between competitors.

Some have argued that technical standards are properly a subject of competition, and that technical standards should evolve and change over time through competition. This view sidesteps several lessons learned in the last decade in the area of technical standards for transfer

[*/] As used herein, the "network platform" refers to unbundled combined network elements which the Act and this Commission's prior orders require ILECs to furnish to CLECs.

of long distance customers. There, the standards have evolved through the work in various industry fora, such as Alliance for Telecommunications Solutions ("ATIS") and Order and Billing Forum ("OBF"), which are open to participation by all affected parties in the industry. The technical standards established in the long distance arena have been established by industry-wide standards-setting bodies such as ATIS and OBF, not by competition. Indeed, standards for software interfaces with ILECs simply cannot be established by competition. This is because there cannot be "competition" for a technical standard wholly in the control of each individual ILEC. Rather, each individual ILEC (absent participation in and adherence to uniform technical standards established by industry-wide standard-setting bodies) has unilateral, indeed, monopoly power over the technical standards for interfacing with it. No competitor or other private party can gain access to the ILEC software codes (and all the information needed to understand those codes and their functions) to develop a "competitive" product. Thus, without uniform technical standards developed by industry-wide standard-setting bodies, competitors to the ILECs may be subjected to hundreds of different ILECs, each continuously changing and updating crucial OSS interface software.

Without such uniform technical standards, competitors to the ILECs will be forever chasing the elusive goal of developing their own software interface compatibility with the ILECs' OSS. This fact alone would be a major impediment to small companies competing in local markets, and would be used as well as a tool to harm larger competitors, otherwise capable of providing important competition. [*/] As a policy matter, this Commission needs to work promptly toward uniform technical standards for software interfaces. Importantly, the standards

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[*/] As the affidavits of numerous witnesses on file in the Southwestern Bell and Ameritech Michigan proceedings demonstrate, the current situation is similar. It is in part the unsettled and widely varying nature of software interfaces today which has delayed competition.

can and will evolve and improve over time, but will do so through the action of industry-wide standards-setting bodies, such as ATIS and OBF, which are open to participating in the entire industry.

The Commission's understanding of the need for uniform technical standards finds a parallel in a recent order of the Wisconsin Public Utilities Commission. [May 30, 1997 Final Order (*see* especially pages 20-25)] In its Order ruling on Ameritech's Section 271 application for Wisconsin, that Commission, after hearings, denied Ameritech's application in part because of its finding that "[i]t is critical that Ameritech have a change management process, defined and in place, to" "prevent" Ameritech from making changes to its OSS interfaces in such a way as "to prevent the competitors from ever having fully functional software for handling service orders or serving their customers." [Wisconsin Final Order at 20] As the Wisconsin PUC explained, unless steps are taken, Ameritech, "over time," could "revise and update these interfaces to incorporate changes and upgrades in its own systems" that would not be backward compatible for the CLECs, or otherwise make "changes frequently enough" so that competitors could not keep up, which "can be, quite literally, a matter of survival for the competitors." [Wisconsin Final Order at 20-21; *see also* Wisconsin Final Order at 21-22 (giving a specific example showing how such changes could prevent the CLECs from placing orders and features)]

The Wisconsin PUC also stressed that "[c]ompeting providers need assurances of the stability and readiness for use of Ameritech systems before investing in facilities and committing resources to applying these interfaces in practice" [Wisconsin Final Order at 25], and found that "[i]t is reasonable to require that [a change management system] be completed and in place before the Commission approves the Statement" [Wisconsin Final Order at 20; *see also* Wisconsin Final Order at 20-21 (describing requirements of such a change management system,

e.g., requiring notice of changes and limiting the number of rewrites that users may undertake)] In sum, the Wisconsin PUC clearly understood, as this Commission recognizes, that, "[i]t is reasonable for this Commission to impose" constraints to "foreclose Ameritech's complete control over both the number and scheduling of non-backwards-compatible upgrades." Wisconsin Final Order at 23]

The Wisconsin PUC order correctly explains why, without technical standards adhered to by all ILECs, ever-changing software standards can harm competition. To ensure effective local competition, and avoid the problems now prevalent in the industry, as discussed in the Wisconsin PUC order, this Commission concludes that it should act to expedite uniform technical standards to be adhered to by all ILECs. This Commission therefore sets the deadline of May 1, 1998 for ILECs and CLECs who have participated in industry-wide standards-setting bodies to report to the Commission on the progress of technical standards for software interfaces. If uniform industry-wide technical standards for the software interfaces necessary to transfer customers from an ILEC to a CLEC and back, or from a CLEC to a CLEC, have not been adopted by an industry-wide standards-setting body by May 1, 1998, the Commission will undertake, on an expedited basis, to receive affected parties' view on appropriate technical standards to be set by the Commission. To do so, the Commission may hire such technical software and other experts as appropriate to assist it. If Commission action is needed to establish technical standards because industry-wide standards-setting bodies have failed to act, the Commission will establish appropriate standards no later than October 1, 1998.

It should be noted that technical standards will need to allow for the differing needs of competitive carriers. For example, extremely small carriers may continue to need to communicate by fax while larger carriers could communicate by EDI or Web/GUIs. National

carriers could communicate with uniform software interfaces, and extremely large carriers with huge volumes could communicate via electronic bonding.

The Commission also notes technical standards should be developed through a back-and-forth process, which is normal in a commercial setting. ILECs should not be permitted to unilaterally impose standards on users through industry fora. Thus, the FCC should instruct industry groups to cooperate with other industry groups -- including user groups -- to develop the technical standards on an iterative basis.

III. SUGGESTED TEXT FOR COMMISSION ORDER REGARDING REPORTING REQUIREMENTS

In order to foster and promote local competition, two distinct reporting requirements are imposed on ILECs, described below in Sections A and B.

A. Reporting to ensure compliance with Section 251 and the Commission's Orders

To ensure compliance with Section 251 of the Telecommunications Act of 1996 and the Commission's Orders entered thereunder, the following reporting requirements are imposed upon ILECs subject to this Order.

The first requirement, monthly reporting to CLECs, will enable the ILECs competitors to compare, on a monthly basis, the quality of service the ILEC is providing that CLEC with the service the ILEC is providing other CLECs and itself. Such information will allow CLECs to work with ILECs to improve the quality of their own and the ILECs service, by giving the information needed to establish a competitive benchmark. The second requirement, monthly reporting to the Commission and to state public utility commissions, will enable the state commission to take such appropriate corrective action as they deem necessary to correct competitive problems uncovered by the reports, and will give this Commission the basis for any

needed corrective action or remedy to ensure compliance with Section and the Commission's orders thereunder.

(l) Monthly reports to CLECs

Each ILEC subject to this Order shall provide to each CLEC with which it has signed a contract, or which is purchasing resale services or unbundled network elements, under tariff, a monthly report of the ILECs performance standards for the preceding 24 months. Such reports shall contain data relating to the ILEC itself, the ILEC affiliate/subsidiary, and all CLECs on average, and for the individual CLEC to which the report is made. Such reports shall also describe fully the basis for each measurements reported.

(2) Monthly reports to the Commission and to state public utility commissions

(a) Each ILEC subject to this Order shall provide to the Commission, and to each state public utility commission in states in which it is certified as a common carrier, a monthly report of its performance. As to the Commission, the report shall be made both individually, as to each state in which the ILEC is certified as a common carrier, and on a an aggregate basis. As to state public utility commissions, the report shall be as to performance standards for that particular state. If data is collected by the ILEC on a region-wide or other basis, rather than by state, that information shall be provided to each state as to which any of the information pertains.

(b) The information reported by ILECs hereunder shall be broken out by CLECs as a group, by CLECs individually, by ILEC affiliate/subsidiary, and by the ILECs own internal performance standards. The information will be furnished under appropriate confidentiality orders entered by the relevant government agency, or otherwise as ordered by the Commission to protect competitive information.

(c) The reporting requirements imposed hereunder shall begin thirty (30) days after entry of this Order.

(d) In addition to the actual reporting of measurements there must be a commitment to take corrective action when poor performance or non-parity situations are identified. The ILECs need to self-report all measurements and analyze the results. Root cause analysis must be conducted and corrective actions taken to improve results or resolve issues. Corrective action steps, schedules and milestones should be developed by the ILEC and CLEC as appropriate to ensure timely implementation of corrective steps. Failure of an ILEC to self-report or to take appropriate corrective action steps will be considered by the Commission in any remedial action brought by it under these rules.

B. Requirements to assure CLECs parity of ILEC-controlled competitive information

This separate reporting requirement is imposed on ILECs to assure that CLECs have parity of access to that information which is essential to real competition, but is otherwise in the sole control of the ILEC. Under this requirement, ILECs are required to notify all CLECs with which they have signed a contract, or which are purchasing telecommunications services under tariff, or which are purchasing unbundled network elements, of the following:

(1) each ILEC shall provide each Universal Service Order Code (USOC) and the English translation therefor for (a) resold services; (b) services provided by the ILEC to end users but not subject to resale; and (c) each unbundled network element (or combinations thereof) provided by the ILEC to any CLEC; and

(2) all planned changes to software or business processes affecting any CLEC, with full written documentation and explanation of such changes, not less than thirty (30) days prior to the date such changes are planned to go into effect.

IV. SUGGESTED TEXT FOR COMMISSION ORDER REGARDING REMEDIAL PROVISIONS

To ensure ongoing compliance with Section 251 and the Commission's orders thereunder, the following provision is adopted:

> To remedy violations of Section 251 of the Telecommunications Act and the Commission's Orders, the Commission has determined that the only truly effective remedy is to prohibit ILECs from marketing long distance services to their local customers for a period of time to be determined by the Commission, after notice and opportunity for a hearing, until full compliance with Section 251 and the Commission's orders is demonstrated through the performance standards reports required in this Order.

Based on the history of this Commission's experience over the last thirty years of opening the local and long distance telephone network to competition, the Commission finds that this provision is necessary to avoid, at least in part, expensive and distracting antitrust and other private and public litigation which may be brought to enforce the ILECs' compliance with their valid legal duties under the Telecommunications Act of 1996. The Commission further finds that these provisions are necessary to fully effectuate the purposes of the Telecommunications Act of 1996, to open local telephone markets to competition, and to provide all U.S. consumers with "one-stop shopping."

A. The inadequacy of money damages to ensure compliance with Section 251 and the Commission's orders

After full consideration, the Commission has determined that money damages, in any form, are ineffective to ensure compliance with Section 251 by ILECs. This is so for several reasons.

The fact is that any amount of money damages which reasonably could be imposed is the proverbial "drop-in-the-bucket" for virtually every ILEC subject to requirements of Section 251

and this order. [*/] This is so because even a fine as high as $10 million against any of the ten largest ILECs is not -- in the overall cash flow and gross and net profit of one of those companies -- a sum of money so significant that it would act as a meaningful deterrent to violating Section 251 and the Commission's orders thereunder. The ILECs would view such money damages simply as the cost of doing business.

This is particularly true where the monetary penalty would be imposed only years after the violation had occurred -- and presumably was continuing. The potential gain to the ILEC -- and the concomitant harm to the public and competition from the ILEC's continued refusal to comply with Section 251 and the Commission's orders thereunder would be so much greater than the value of any money damages that money damages clearly are inadequate as a remedy to ensure compliance with Section 251 of the Act. [*/] [*/]

The Commission accordingly finds the that real impetus for continued compliance with Section 251 and the Commission's orders entered thereunder is not the theoretical threat of the possible imposition in several years of a comparatively light monetary penalty. Rather, it is the realistic threat of this Commission's order halting for some period of time the ILECs' ability to

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[*/] Further, to determine an appropriate amount of money damages would require intensive work by staff in a Commission already fully occupied with important policy issues. To devote valuable staff time to building, making and proving a case on the record for money damages, with the other demands upon the Commission, would be a burden upon already hardworking staff.

[*/] The Commission has available to it the remedy of a monetary penalty to be assessed against the RBOCs for violation of Section 251. [*See* Section 271(d)(6)(ii)]

[*/] Indeed, the prospect of money damages actually places the incentive on the wrong side of the scale. Any rational self-interested business easily could conclude that the simple risk of an eventual in fine of perhaps as much as $10 million was to keep its markets wholly or partially closed. A rational, self-interested ILEC could assess this as a litigation *risk*, to be weighed against the *certainty* of less competition in its core local service business. So weighing the risks and benefits, a rational ILEC could conclude that a blanket or partial refusal to comply with Section 251 -- or simple foot-dragging -- is an appropriate business decision.

market long distance services to its local telephone customers, and offer "one-stop shopping." The Commission accordingly finds that its ability to halt marketing of long distance to consumers until the ILEC is in full compliance with Section 251 and the Commission's orders is essential to fulfilling the clear and central Congressional purpose in enacting the Telecommunications Act of 1996 (described briefly below) and to ensuring compliance with Section 251 of the Act and the Commission's orders thereunder.

B. The overriding purpose of the Telecommunications Act of 1996 as reflected in legislative history is to open all local markets to competition, and to allow all U.S. consumers the benefit of "one-stop shopping" for telecommunications services

The intent of the Congress in enacting the Telecommunications Act of 1996 is clear, both from the text of the Act itself and from the accompanying legislative history. A major purpose of the Act, recited in the opening paragraph of the Conference Report, was to "accelerate . . . deployment of advance telecommunications and information technologies and services to all Americans by opening all telecommunication markets to competition . . . ." [Conf. Rpt. 104-458, to accompany S.652 at 1] In the debate on the bill, the chief sponsor in the Senate, the Chairman of the Senate Commerce Committee, stated on the floor of the Senate on final passage of the bill that:

> "The Telecommunications Act of 1996 will get everybody into everybody else's business."
>
> * * *
>
> "The key to this bill is the creation of an incentive for the current monopolies to open their markets to competition."

Elsewhere, legislative history demonstrated the importance of "one-stop shopping" in a single package for telecommunication services as a major impetus for the bill. Thus, the requirements of Section 251 to open local markets to competition are not limited to Bell

Operating Companies, but rather are imposed upon all ILECs. As the Senate Commerce Committee Report on S. 652 stated:

> "The Committee believes that the ability to bundle telecommunications, information, and cable services into a single package to create 'one-stop shopping' will be a significant competitive marketing tool."

S. Rep. No. 104-123, 104th Cong., 1st Sess. at 23 (March 30, 1995)

On the floor of the House, in debate on final passage of the House bill, Mr. Bliley, Chairman of the House Commerce Committee, described its purposes as follows:

> "Convergence is the technical term used to describe the rapid blurring of the traditional line separating discrete elements of the industry. From a policy perspective, convergence means that Congress must set the statutory guidelines to create certainty in the marketplace and to ensure fairness to all industry participants, incumbent and new entrant alike."

[Congressional Record, August 2, 1995 at H.8282]

In the Senate as well, the recognition of the importance of "one-stop shopping" was expressed in important legislative history. On debate of the final passage of the Senate Bill 652 (the Telecommunications Act) on June 7, 1995, Mr. Burns, a member of the Commerce Committee stated:

> "I recently saw a survey that illustrates why one important group -- small American business owners -- want and need communications reform. . . . The survey of 4600 small business owners . . . found that almost two-thirds of the small business owners surveyed want to be able to get long distance telephone service from their local telephone company; and 54% want to be able to choose local service from their long distance company."
>
> "<u>A full 86% of these small business owners want one-stop shopping for telecommunications services. Two thirds of them want to be able to choose one provider that can give them both local and long distance telephone service presented in either way.</u>"
>
> * * *
>
> "<u>This bill will give all small business owners the one-stop shopping that they want.</u>" (emphasis added)

See also the views of the Chairman of the Senate Commerce Committee on the floor of the Senate on final passage of the Senate version of the Telecommunications Act to the same effect. [Congressional Record, June 14, 1995 at S.8363]

Recognizing the centrality of OSS performance standards to the rapid development and long-term maintenance of competition for local telephone service, the Commission will exercise its authority appropriately and vigorously to ensure that RBOCs and other ILECs subject to Section 251 and the Commission's orders thereunder comply fully with all applicable requirements.

C. Legal authority for rule announced here

Under well-established authority from the Supreme Court and Courts of Appeal, the remedy adopted by the Commission here clearly is valid, because it is "reasonably related" to the purposes of the Telecommunications Act of 1996. *See Mourning v. Family Pubs. Serv., Inc.*, 411 U.S. 356, 369-80 (1973) (upholding agency's rule compelling sellers to make certain disclosures in connection with extending credit because "the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation,'" a "standard" which "is well established under our prior cases" (citations omitted).

This principle continues to be followed diligently by Federal Courts of Appeal. *See Bicycle Trails Council v. Babbitt*, 82 F.3d 1445, 1451 (D.C. Cir. 1993) ("Unless we find that EPA's rule contravenes the unambiguously conveyed intent of Congress as to this precise issue, we will reject the petitioners' challenge so long as the regulation appears designed to implement the statutory scheme by reasonable means"); *Chevron USA, Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844 (1984) (an agency's "regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute").

The Commission's rule announced here is reasonably related to the purposes of the Telecommunications Act of 1996. As the legislative history set forth above makes clear, the fundamental major purpose of the Telecommunications Act of 1996 was to "let everybody into everybody else's business" (citations omitted) and to allow telecommunications providers to offer "one-stop shopping" -- end-to-end bundled local, information and long distance services to consumers. (citation omitted) The Commission finds that this central purpose of the Act would be badly frustrated in those parts of the country in which the ILEC happens not to be an RBOC without the remedy adopted here.[*/] Non-RBOC ILECs could flout the requirements of Section 251, with the only remedy being a relatively small monetary penalty, collected only after years of litigation and appeal. Such a remedy has no deterrent effect. Indeed, it invites companies to flout the law. The Congress fully intended markets to be open, and intended the major long distance companies to be able to enter local telecommunications markets to offer "one-stop shopping" to consumers in those non-RBOC territories, as well as to consumers in RBOC regions. If a non-RBOC ILEC refuses to open local markets to competition, thereby

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[*/] RBOCs are subject to the plain remedial provisions of Section 271(d)(6)(iii). The Telecommunications Act of 1996 provided the mechanism whereby each Regional Bell Operating Company (RBOC) could enter the long distance market in a particular state upon a final order by the Commission approving a 271 entry application. Among the conditions for approval of a 271 application is the Commission's finding that a Bell operating company has satisfied all the requirements of Section 271(B), the competitive checklist. Sections 271(B) specifically incorporates, *inter alia*, several requirements of Section 251 as a requirement for 271 entry. *See*, *e.g.*, Sections 271(b)(i), (ii) and (xiv), incorporating by reference Sections 251(c)(2), 251(c)(3) and 251(c)(4).

As a specific remedy for enforcement of these conditions, the Act further provides that the Commission may, *inter alia*, (after notice and opportunity for a hearing), suspend or revoke its previously granted 271 approval if it "determines that a Bell operating company has ceased to meet any of the conditions required for such approval." See Section 271(b)(6)(iii). Under this statutory language, the Commission has independent authority to suspend a Bell operating company's right to market or enter orders for long distance service for a period of time until the company is in full compliance with Section 251 and the Commission's orders thereunder.

preventing IXC competitors from entering those markets and offering end-to-end service and competition against the ILEC -- while at the same time offering bundled end-to-end competition against long distance companies in *their* market -- then Congress's central purpose in enacting the Telecommunications Act -- to "let everyone into everyone else's business" and to promote "one-stop shopping" -- will have been almost wholly vitiated for large portions and millions of consumers in the United States.

Based on this legislative history so clearly describing the statute's purpose, the Commission has full authority to impose the remedial measures announced here as to any ILEC which fails to comply with the mandates of Section 251 and this Commission's orders.