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

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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
)  
The Development of a National Framework to ) RM 9474  
Detect and Deter Backsliding to Ensure )  
Continued Bell Operating Company Compliance )  
with Section 271 of the Communications Act )  
Once In-Region InterLATA Relief is Obtained )

**REPLY COMMENTS OF THE ASSOCIATION FOR LOCAL  
TELECOMMUNICATIONS SERVICES, KMC TELECOM INC.,  
AND FOCAL COMMUNICATIONS CORPORATION  
IN SUPPORT OF PETITION FOR EXPEDITED RULEMAKING**

The Association for Local Telecommunications Services, Focal Communications Corporation, and KMC Telecom Inc. (collectively the "Joint Commenters"), by their undersigned counsel, responds to the comments submitted pursuant to the Commission's February 5, 1999, *Public Notice*<sup>1</sup> inviting comments on Allegiance Telecom, Inc.'s ("Allegiance") Petition for Expedited Rulemaking ("Petition") in the above-captioned proceeding.

The Joint Commenters, along with a majority of the other commenting parties, supported Allegiances' proposition that backsliding is a serious problem that should be addressed by the Federal Communications Commission ("Commission"), prior to the grant of any Section 271 application.<sup>2</sup> The Joint Commenters remain convinced that the Commission should initiate a

<sup>1</sup> Office of Public Affairs Reference Operations Division Petitions for Rulemaking Filed, Report No. 2315, *Public Notice*, 1999 WL 49798 (February 5, 1999).

<sup>2</sup> Comments of Time Warner Telecom ("Time Warner") at 3; *see* Comments of MCI WorldCom, Inc. ("MCI WorldCom") at i, 1; Comments of Intermedia Communications, Inc. ("Intermedia") at 2; Comments of CoreComm, Ltd. ("CoreComm") at 1, 3-4; *see* Comments of Hyperion Telecommunications, Inc. ("Hyperion") at 1; Comments of RCN Telecom Services, Inc. ("RCN") at 1, 4; Comments of Pac-West Telecomm, Inc. ("Pac-West") at 1-2; Comments of State Communications, Inc. ("SCI") at 1-2; Comments of WinStar Communications, Inc. ("WinStar") at 1; *see* Comments of CTSI, Inc. ("CTSI") at 1; *see* Comments of MGC Communications, Inc. ("MGC") at 1; *see* Comments of AT&T Corp. ("AT&T") at 1, 9-10. While AT&T agrees that backsliding is a

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rulemaking proceeding to develop a national Section 271 compliance system comprised of minimum compliance standards, complaint procedures and penalties. A handful of commenters, including the three BOCs that filed comments, oppose Allegiance's call for the Commission to initiate a rulemaking to specifically address backsliding.<sup>3</sup> The Joint Commenters by these Reply Comments briefly address the major arguments raised in opposition to the Allegiance Petition.

As an initial matter, the BOCs contend that there is no need for the remedies suggested in the Allegiance Petition because there is no backsliding problem in the first instance.<sup>4</sup> Despite the BOCs' assertions to the contrary, the problems encountered by the CLECs in their attempts to interconnect with the BOCs are both well documented and well known to the Commission.<sup>5</sup> Furthermore, the question of whether there should be an enforcement mechanism to ensure BOC compliance with Section 271 after they gain approval, has already been answered in the affirmative by Congress when it adopted Section 271 of the Act. Specifically, Section 271(d)(6)(B) directs that the Commission "*shall* establish procedures for the review of complaints concerning failures by Bell Operating companies to meet conditions required for [Section 271] approval . . . ."<sup>6</sup> Thus, the

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serious problem requiring Commission action, it does not support the need for a new proceeding. Comments of AT&T at 4-5.

<sup>3</sup> Comments of Bell Atlantic at 1; Comments of BellSouth Corp. ("BellSouth") at 1; Comments of SBC Communications, Inc. ("SBC") at 1; *see* Comments of AT&T at 2; Comments of State of New York Department of Public Service ("NYDPS") at 1-2.

<sup>4</sup> Comments of Bell Atlantic at 7-8; Comments of BellSouth at 2-3; Comments of SBC at 3

<sup>5</sup> *See, e.g.*, Comments of MGC at 3-5; Pac-West at 4; Comments of RCN at 3-4; Comments of WinStar at 8.

<sup>6</sup> 47 U.S.C. § 71(d)(6)(B) (emphasis added).

question is not whether the Commission should establish a complaint and penalty regime, but rather when the Commission should act and what the scope of that action should be.

The Joint Commenters urge the Commission to adopt a pro-active posture on the issue of Section 271 enforcement rather than react to complaints in an *ad hoc* manner as some commenters suggest. The need for certainty, efficiency and sufficiency in procedures and penalties cannot be overstated. For the Commission to attempt to develop a cohesive enforcement regime after the industry enters the post-Section 271 regulatory environment is to all but ensure unnecessary delay, both in the development of an enforcement policy and in local competition. As SCI points out in its comments, the period in which regulators have the maximum leverage on the BOCs is *before* they gain the authority to provide in-region interLATA services.<sup>7</sup> Once Section 271 authority has been granted, any likelihood that a consensus might be reached on issues incident to a Section 271 enforcement scheme will all but disappear. The predictable result is yet more delay; delay at the Commission, at state public utility commissions, in federal court, in state court, and ultimately for consumers hoping to realize the benefits of local competition.<sup>8</sup>

Nor should the Commission rely entirely upon processes at the state level to ensure enforcement as some commenters suggest.<sup>9</sup> As we pointed out in our initial comments, absent the creation of national minimum performance standards CLECs will be forced to undertake

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<sup>7</sup> Comments of SCI at 2.

<sup>8</sup> At least one BOC is prepared to make a frontal assault on the Section 271 enforcement provision, arguing that it is unconstitutional. *See* Comments of BellSouth at 6.

<sup>9</sup> Comments of NYDPS at 1-2; Comments of SBC at 2-3. SBC argues that interconnection agreements negotiated under Section 251 typically provide for dispute resolution and liquidated damages. Comments of SBC at 2. While this may be true, the Joint Commenters' experience suggests that these provisions will not be sufficient to deter backsliding.

burdensome demonstrations in each state, concerning the proper level of performance they should have received and BOC divergence from that standard.<sup>10</sup> While the Joint Commenters agree that many state governments have made remarkable strides in establishing Section 271 enforcement regimes, we do not believe that the best course of action is to leave all complaint enforcement to the states. Instead, we agree with those commenters who advocate basing federal standards upon established state standards and permitting states to supplement those minimum standards based on local concerns.<sup>11</sup> The Joint Commenters submit that this combination of federal and state requirements provides the best assurance of achieving the goals of the Act.

Finally, the Joint Commenters disagree with the position, espoused by some commenters, that initiating a rulemaking in accordance with Allegiance's Petition would be duplicative and a waste of the resources of both the Commission and of interested parties.<sup>12</sup> For example, AT&T contends that many issues addressed in the Allegiance Petition are being addressed in other proceedings, including both the *OSS* and the *Section 706 Proceedings*.<sup>13</sup> However, the *OSS Proceeding* expressly declined to consider enforcement issues,<sup>14</sup> and in the *Section 706 Proceeding*,

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<sup>10</sup> Comments of Joint Commenters at 3-4.

<sup>11</sup> See Comments of NYDPS at 2-3; Comments of CoreComm at 6; Time Warner at 2; SCI at 4-5; Hyperion at 5.

<sup>12</sup> Comments of AT&T at 5; Comments of Bell Atlantic at 5-7; Comments of BellSouth at 1-3; Comments of SBC at 1.

<sup>13</sup> Comments of AT&T at 4-5.

<sup>14</sup> Performance Measures and Reporting requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, CC Docket No. 98-56, RM 9101, *Notice of Proposed Rulemaking*, 13 FCC Rcd 12817 at ¶ 130 (released April 17, 1998) ("We do not think that proposing model enforcement mechanisms is appropriate since our focus, at this initial stage, is on issuing guidelines for performance measures and reporting procedures.")

the Commission noted the importance of enforcement in relation to any collocation and local loop rules, but did not seek comment on any specific enforcement mechanism.<sup>15</sup> Review of the comments submitted in response to the Allegiance Petition suggests that there are enough serious Section 271 enforcement proposals to warrant a separate proceeding to better develop a unified framework for the integration of performance standards, complaints and penalties, into a cohesive enforcement regime to prevent backsliding.<sup>16</sup>

The Joint Commenters submit that if the Commission's current proceedings alone are to be relied upon for the development its Section 271 enforcement policy, the Commission needs to clarify how the various federal and state standards, complaint procedures and penalties will work in relation to one another. The Joint Commenters agree with MCI that, at a minimum, the Commission should supplement the record in these existing proceedings in order to fully examine enforcement issues.<sup>17</sup> This would at least correct the apparent failure of those proceedings to examine these issues.

In conclusion, the Joint Commenters believe that it is imperative that the Commission adopt a pro-active posture in developing a post-Section 271 compliance framework. These issues need to be addressed now, before BOCs gain Section 271 authorization. This will provide the best assurance

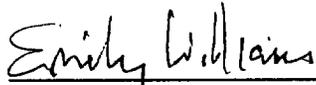
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<sup>15</sup> Deployment of Wireline Service Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 98-188, *Memorandum Opinion, Order and Notice of Proposed Rulemaking*, 1998 WL 458500 at ¶¶ 125, 143, 155, Separate Statement of Commissioner Michael K. Powell (released August 7, 1998).

<sup>16</sup> In fact, one of the Joint Commenters (KMC), submitted a specific proposal to the Commission advocating the use of automatic price reductions for services and facilities when BOCs fail to meet certain performance standards. *See* Comment of the Association for Local Telephone Services, KMC Telecom Inc., and Focal Communications Corporation in Support of Petition for Expedited Rulemaking at 8, Exhibit A (Letter from Michael A Sternberg, President and CEO, *KMC Telecom Inc.*, to The Honorable William E. Kennard, Chairman, *Federal Communications Commission* (Feb. 1, 1999)). The Joint Commenters urge the Commission to propose adoption of this proposal.

<sup>17</sup> *See* Comments of MCI at 1.

that the pro-competitive steps Congress embodied in Section 271 will continue to be fully effective after Section 271 approval.



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**CERTIFICATE OF SERVICE**

I hereby certify on this 23<sup>rd</sup> day of March 1999, that copies of the foregoing Reply Comments of The Association for Local Telecommunications Services, KMC Telecom Inc., and Focal Communications Corporation, were served via Messenger\*\* or U.S. Mail, postage prepaid, upon the following parties:

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