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FEDERAL COMMUNICATIONS COMMISSION
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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor to SBC Communications Inc., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

COMMENTS OF @LINK NETWORKS, INC., CONNECT COMMUNICATIONS CORPORATION, AND WALLER CREEK COMMUNICATIONS, INC. D/B/A PONTIO COMMUNICATIONS CORPORATION, INC.

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Comments of @Link Networks, Inc.,
Connect Communications Corporation
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CC Docket Nos 98-147, 96-98 and 98-141
June 23, 2000

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SUMMARY

The Commission should implement national standards for the provisioning of unbundled network elements, and, in particular, loops. The provisioning of loops by incumbent local exchange carriers ("ILECs") since the passage of the 1996 Act has not been timely or efficient, and has impeded the ability of CLECs to provide services. Delays occur at every stage of the loop provisioning process from the pre-order stage to the maintenance/repair stage. It is the Joint Commenters experience that CLECs wait months to obtain loops and facilities that the ILECs provide to their retail division in days. CLECS are also being asked to pay exorbitant non-cost based prices for conditioning loops to provide xDSL services. Meanwhile, ILECs are plunging ahead with their own plans to offer xDSL service.

The Commission has the opportunity in this proceeding to build on performance standards that have been adopted at state level and/or in the 271 process. The Section 271 application process provides a wealth of data that could serve as the foundation of performance standards for all ILECs. The Commission should also combine national standards with substantive enforcement measures to further the pro-competitive goals of the Telecommunications Act of 1996. The standards and enforcement measures that Joint Commenters urge the Commission to adopt in this proceeding would help assure timely and quality provisioning of loops and that the pro-competitive goals of the Act are achieved.

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CONNECT COMMUNICATIONS CORPORATION, AND WALLER CREEK COMMUNICATIONS, INC. D/B/A PONTIO COMMUNICATIONS CORPORATION, INC.

@Link Networks, Inc.("@Link"), Connect Communications Corporation ("Connect"), and Waller Creek Communications, Inc. d/b/a Pontio Communications Corporation ("Pontio")(collectively the "Joint Commenters") by undersigned counsel and pursuant to the Commission's *Public Notice* (dated May 24, 2000), submits these Comments concerning the "Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband

Loop Provisioning." Joint Commenters urge the Commission to grant ALTS' petition and otherwise substantially strengthen its rules governing loop provisioning by incumbent local exchange carriers ("ILECs"). Joint Commenters propose specific loop provisioning standards. These should serve as the starting point for evaluation of appropriate standards. Additional or more stringent standards may be warranted based on the record established in this proceeding.

I. THE COMMISSION SHOULD ADOPT NATIONAL PROVISIONING STANDARDS

A. National Standards Would Permit More Efficient Decision-Making

The Commission has already recognized the value of national rules establishing ILECs key obligations under the Act. In re-establishing a national list of unbundled network elements in the *UNE Remand Order*[1] the Commission found that a national list would: "(1) allow requesting carriers, including small entities, to take advantage of economies of scale; (2) provide financial markets with greater certainty in assessing requesting carrier's business plans; (3) facilitate the state's ability to conduct arbitrations; and (4) reduce the likelihood of litigation regarding the requirements of Section 251(c)(3)."[2]

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[1] *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238, CC Docket 96-68 (November 5, 1999)("*UNE Remand Order*").

[2] *Id.* at ¶ 117.

Moreover, as the Commission noted, nearly all the state commissions commenting in the *UNE Remand Proceeding* endorsed the need for a national list for UNEs and the Commission's authority to implement such a list.[3]

The Commission's and state experience also shows the desirability of national, uniform loop provisioning standards. In the FCC proceeding evaluating SBC's Section 271 application several inconsistent standards have been employed by various parties. . On the issue of hot cuts, for example, three different standards were employed by various parties – the performance metrics utilized by the New York Public Service Commission, the standards adopted by the FCC in its *Bell Atlantic New York Order*, and ILEC performance metrics utilized by the Texas Public Utility Commission. This multiplicity of standards has made, and will make, it difficult and time consuming to efficiently evaluate the performance. The Texas PUC noted that due to the absence of an FCC standard on unbundled loop conversions, the Texas PUC had to develop its own, which was subsequently altered by the one developed in the *BANY* Order.[4]

National loop provisioning standards would provide all parties a clear understanding of what is required, and the standard would not vary depending on which state was involved. State

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[3] *Id.* at ¶ 119. For instance, the Illinois, California and Connecticut public utility commissions all argued that a national list of UNEs would allow competition to proceed quickly because it will reduce the number of issues states must address in upcoming arbitrations. *Id.* at ¶ 128. Likewise, national standards for loop provisioning would reduce and clarify areas of dispute between the ILEC and the CLEC, thus, allowing competition to proceed more quickly.

[4] CC Docket 00-65, April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 3 (*TX PUC SBC 271 Comments*).

public utility commissions would know which performance standards to utilize without worrying about, as the Texas PUC noted, if their measures are "replaced by fiat with constantly evolving standards set by other tribunals."[5] Both ILECs and CLECs would know how performance would be graded. Accordingly, Joint Commenters urge the Commission to establish national uniform loop provisioning standards.

B. The Commission Has Authority to Adopt National Standards

The Commission has observed that the Supreme Court has "upheld explicitly the Commission's jurisdiction to adopt minimum national rules to implement each subsection of the 1996 Act."[6] As the Supreme Court held in *AT&T Corporation v.* Iowa *Utilities Board*:

> But the question in this case is not whether the Federal Government has taken the regulation of local telecommunications competition away from the States. With regard to the matters addressed by the 1996 Act, it unquestionably has. The question is whether the state commissions' participation in the administration of the new federal regime is to be guided by federal-agency regulations. If there is any "presumption" applicable to this question, it should arise from the fact that a federal program administered by 50 independent state agencies is surpassing strange.[7]

In short, just as in the case of a national list of UNEs that ILECs must make available, the Commission may also adopt national standards for the provisioning of UNEs. Accordingly, the

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[5] *Id.*

[6] *Id.* at ¶ 121.

[7] *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366, 378 (1999)

Commission has authority to implement the standards that the Joint Commenters urge the Commission to adopt.

C. National Standards Can Build On State Experience

As the Commission has noted, "a number of state commissions, including New York, have established a collaborative process through which they have developed, in conjunction with the incumbent and competing carriers, a set of measures, or metrics for the reporting of performance in various areas."[8] In a number of respects, the Commission could simply adopt these standards as national loop provisioning standards.

The Section 271 process provides an excellent source of data and standards from which national standards could be crafted. As the Commission has noted:

> there is a common purpose between Sections 251 and 271 of the Act of opening the incumbents' monopoly local exchange networks to competition. We believe that Congress intended section 251(c)(3) of the Act and the competitive checklist to contain similar, if not identical, obligations.[9]

While many of the proposed standards may have been developed in the context of Section 271 proceedings, the Section 271 checklist tracks, among other things, "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(2) and 252(d)(1)."[10] The standards proposed in these comments pertain to nondiscriminatory access to the local loop

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[8] *BANY Order* at ¶ 54.

[9] *UNE Remand Order* at ¶ 109.

[10] 47 U.S.C. § 271(c)(2)(B)(ii).

and OSS which were both items on the list of unbundled network elements issued by the FCC.[11] No ILEC would be prejudiced by use of these standards as national loop provisioning standards since they merely implement the Section 251 obligations to which all ILECs are subject. Accordingly, the Commission is able to adopt national loop provisioning standards by simply adopting, or building on, standards developed by the states and/or in the Section 271 process.

II. TIMELINESS OF LOOP PROVISIONING

New market entrants will not be able effectively to compete for customers if ILECs are able, either intententionally or for other reasons, to systematically discriminate against CLECs in the timeliness of provision of loops. The following are proposed standards that would protect against such discrimination in the various stages of loop provisioning. Standards will be proposed for both voice-grade loops and xDSL-capable loops where the standards do not overlap. In addition, in the section on actual provisioning, consideration will be given to the various methods of provisioning, and applicable standards for each method. Joint Commenters agree with ALTS that loop provisioning standards should not only be implemented for voice-grade loops, but for those loops capable of transmitting digital signals, including ISDN, ADSL, HDSL, and DS-1 loops.

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[11] *UNE Remand Order* at ¶¶ 162 *et seq.*

A. Pre-Ordering

Pre-ordering encompasses those activities that a carrier undertakes to gather and verify the information needed to place an order. The Commission has observed that:

> [g]iven that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that inferior access to the incumbent's OSS does not render the carrier a less efficient or responsive service provider than the incumbent.[12]

The general standard that this Commission has applied to the pre-ordering stage in the context of its Section 271 evaluations has been that since most pre-ordering functions that support service through unbundled network elements are analogous to the pre-ordering of a BOC's retail services, the BOC must demonstrate that "it provides requesting carriers access that enables them to perform these functions in substantially the same time and manner as [the BOC's] retail operations."[13] For those pre-ordering functions that lack a retail analogue, the BOC "must provide access that affords an efficient competitor a meaningful opportunity to compete."[14] The Commission should adopt this as the overarching standard governing pre-ordering functions of all ILECs and further implement these standards with the following.

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[12] *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA service in the State of New York*, CC Docket No. 99-295, FCC 99-404 (December 22, 1999) at ¶ 129 ("*BANY Order*").

[13] *Id.*

[14] *Id.*

1. Application-to-Application Interface

Proposed Standard – Parsed customer service records ("CSRs") provided in parity plus ten seconds.

"[P]roviding pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC."[15] In addition to having access to the same information as the ILEC, the CLEC must have the ability to retrieve this information and process the information at parity with the BOC's retail services. On of the major problems that CLECs have had in interfacing with the BOC's pre-ordering functionality has been in regard to "parsing" pre-ordering information.[16] [17] As this Commission has observed:

> [i]n this regard, the BOC must enable competing carriers to transfer pre-ordering information electronically to the BOC's ordering interface or to the carriers' own back office systems, which may require "parsing" pre-ordering information into identifiable fields. Without an integrated system, a competing carrier would be forced to re-enter pre-ordering information manually into an ordering interface, which leads to additional costs and delays, as well as a greater risk of error. This lack of integration would place competitors at a competitive disadvantage and

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[15] *Id.*

[16] Parsed formats provide a readable format to the data by placing lines and spaces within the text. Many BOC ordering systems require CLECs to enter data in a parsed format.

[17] *In the Matter of Application of SBC Communications, Inc., et al, for Provision of In-Region InterLATA Services in Texas*, CC Docket No. 00-65, AT&T Comments at 51-53 (April 26, 2000)("*AT&T SBC 271 Comments*"); MCI WorldCom Comments at 9 (April 26, 2000)("*WorldCom SBC 271 Comments*").

significantly impact a carrier's ability to serve its customers in a timely and efficient manner.[18]

SBC Communications ("SBC") has failed to provide pre-ordering information in a parsed format,[19] leading to excessive CLEC order rejections.[20] Consequently, CLECs must expend valuable time and resources getting the information in a format that the BOC system will accept even though many BOC retail divisions do not have to perform parsing in order to place an order.[21]

This Commission applied the NY PSC standard for parsed CSRs in evaluating Bell Atlantic's performance in this area,[22] and should adopt this standard as a national standard for provision of CSRs in a parsed format in a nondiscriminatory manner.

2. Loop Make-up Information

Proposed Standards:

Mechanized Loop Qualification – Parity with retail plus four seconds.

Manual Loop Qualification – 95% of requests completed within 72 hours.

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[18] *BANY* Order at ¶ 137.

[19] *AT&T SBC 271 Comments* at p. 51; *WorldCom SBC 271 Comments* at p. 6.

[20] *AT&T SBC 271 Comments* at p. 52.

[21] *WorldCom SBC 271 Comments* at p. 13.

[22] *BANY Order*, ¶ 152.

As this Commission has observed, "[b]ecause characteristics of a loop, such as its length and the presence of various impediments to digital transmission, can hinder certain advance technologies, carriers often seek to 'pre-qualify' a loop by accessing basic loop makeup information that will assist carriers in ascertaining whether the loop, either with or without removal of the impediments, can support a particular service."[23] Thus, "[i]f new entrants are to have a meaningful opportunity to compete, they must be able to determine during the pre-ordering process as quickly and efficiently as can the incumbent, whether or not the loop is capable of supporting xDSL-based services."[24] However, ILECs are not providing loop information in a nondiscriminatory manner. As ALTS demonstrates in its petition, SBC's loop qualification system is grossly out of parity with the access SBC provides to its retail DSL sales force.[25]

Joint Commenters urge the Commission to consider adopting as a national standard governing provision of loop information the approach of the New York Public Service Commission. The New York PSC has set two performance measures. The first, PO-1-06, tracks average response time for mechanized loop qualification, with the standard being parity with retail

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[23] *Id.* at ¶ 140, fn. 419.

[24] *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket Nos. 98-147 *et al.*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd. 24012, 24038 (1998)("*Advanced Services Order*").

[25] *ALTS Petition*, p. 24.

but not more than 4 seconds.[26] PO-8-01 tracks the average response time for manual loop qualification, and the standard is 95% completed within 72 hours.[27] These standards would help assure parity in provision of loop make-up information.

B. Ordering

Proposed Standard:

Return of 95% of mechanized order confirmation and rejection notices within two hours of submission to BOC, and 95% of manually processed order confirmation and rejection notices under ten lines within 24 hours of submission.[28]

1. Order Rejects

A key measure of nondiscriminatory access to ILEC ordering processes is the ILEC's "overall ability to return timely order confirmation and rejection notices, accurately process manually handled orders, and scale its systems."[29] If a CLEC does not receive timely rejection notices it will not be able to successfully arrange service for new customers and, consequently, will be seriously harmed in the marketplace. Failure to return timely rejection notices is

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[26] *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in Part Petitions for Reconsideration and Clarification, Case 97-C-0139 (NY PSC The effects on CLECs on untimely reject notification is starkly demonstrated by the experience in Texas. Feb. 16, 2000), p. 19 (*NYPSC Order #2*).

[27] *Id.*

[28] For xDSL services, the applicable timeframe is 72 hours.

[29] *Id.* at ¶ 163.

particularly harmful because "new entrants cannot correct errors and resubmit orders until they are notified of their rejection."[30]

The foregoing suggested timing metrics coupled with enforcement mechanisms will help assure that ILECs process rejects in a nondiscriminatory manner.

2. Jeopardy Notices

Proposed Standard:

Timeliness of notice of jeopardy of service order request where miss is known in advance of due date (missed commitment with new date/time).

100% within 24 hours before due date with facilities.
100% within 48 hours before due date without facilities.

A jeopardy notice is a notification by the ILEC to the CLEC that a service installation or repair due date will be missed.[31] The Commission has heretofore declined to require a BOC to actively provide jeopardy notices, instead of merely providing access to information that the due date would be missed.[32] The Commission also declined to require a BOC to provide notices that it is going to miss a due date although it acknowledged that "a system designed to deliver

[30] *Id.* at p. 43 *citing Application of BellSouth Corp. to Provide In-Region, InterLATA Services in South Carolina*, 13 FCC Rcd. 539, ¶ 117 (1997).

[31] *BANY Order* at ¶ 184.

[32] *Id.* at ¶ 185.

jeopardy notification well in advance of missed appointments would lessen the impact of such misses."[33]

Joint Commenters request that the Commission reconsider its prior determinations because both Bell Atlantic and SBC have demonstrated the ability to send jeopardy notices to CLECs.[34] ILECs should be required to provide jeopardy notices and to provide notices in a timely manner that will allow the CLEC to notify the end user well in advance that a due date may be missed. A separate performance metric should be created for delivery of jeopardy notices.

A suitable standard is the "Due Date Minus Two" procedure Bell Atlantic applies to provide jeopardy notices in regard to hot cuts. Under the procedure, Bell Atlantic is required to check for a competing carrier's dial tone two days before a hot cut date and promptly notify the carrier if there is a problem.[35] This procedure, in the words of the NY PSC, "allows the [competitive LEC] the opportunity to notify its customer of potential delay and, if necessary, postpone the due date."[36] The Commission commended Bell Atlantic for developing this jeopardy process for hot cuts and found "that it appears to be critical to the proper functioning of the hot cut

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[33] *Id.*

[34] *TX PUC SBC 271 Evaluation*, p. 9.

[35] *BANY Order*, ¶ 186.

[36] *Id.*

process."[37] There is no reason why all ILECs should not implement a similar jeopardy process for non-hot cut orders, especially since such a process is equally critical for those orders. Accordingly, the Commission should consider adopting this standard.

C. Provisioning

1. Average Completion Intervals

Proposed Standard:

ILEC must provision 95% of xDSL orders within 3 business days (for 1-10 loops), 7 business days (for 11-20 loops) and 10 business days (for 20+ loops).

The Commission has found that Average Installation Interval data is critical to determining if "a BOC provides equivalent access to OSS because such data are 'direct evidence of whether [a BOC] takes the same time to complete installations for competing carriers as it does for [itself], which is integral to the concept of equivalent access.'"[38] The Commission has noted the importance of the average interval in evaluating a BOC's provision of xDSL capable loops. The Commission has held that "we would expect a BOC to demonstrate, preferably through the use of state or third-party verified performance data, that it provides xDSL capable loops to competitors either in substantially the same average interval in which it provides x-DSL capable

[37] *Id.*

[38] *Id.* at ¶ 193.

service to its retail customers or in an interval that offers competing carriers a meaningful opportunity to compete."[39]

Intrinsically tied into the average provisioning interval is data as to missed due dates. In fact, the Commission has urged consideration of the average completion interval in context with missed due dates because in some circumstances the completion interval may not be, on its own, an accurate indicator of whether a BOC is providing loops in a timely manner.[40] In Texas, SBC's performance in regard to completion intervals and missed due dates was out of parity for a significant amount of time.[41] Thus, CLEC end users would be suffering the double ignominy of delays in getting their DSL service as well as the frustration of missed appointments.

Once again, this situation demonstrates how across-the-board standards will further the pro-competitive goals of the act. Requiring an ILEC to provision loops within a certain defined interval will help ensure that appointments are not missed, because the ILEC could ill afford the provisioning delay that a missed due date would cause.

2. Hot Cuts

Proposed Standard:

TX PUC Benchmark – 100% of orders of 24 lines or fewer completed within two hours.

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[39] *BANY Order*, ¶ 335.

[40] *Id.* at ¶ 289.

[41] CC Docket 00-65, Comments of @Link, Bluestar, Mpower and Pontio at pp. 11-12 (April 26, 2000)

Analogous Bell Atlantic New York Order standard – 90% of orders of ten loops or fewer to be completed within one hour.
Proposed CLEC standard – 98% of orders of ten loops or fewer to be completed within one hour.

A vital facet of a BOC's provisioning of unbundled loops is through "the use of coordinated conversions of active customers" from the BOC to the competing carriers.[42] This process is known as a "hot cut" and entails manually disconnecting the customer's loop in the BOC's central office and reconnecting the loop at the competing carrier's collocation space.[43] The customer is taken out of service while the hot cut is in progress. It is critical that the hot cut is provisioned correctly with coordination between the BOC and the competing carrier because problems with the cutover could result in extended service disruptions for the customer.[44] For a competing carrier trying to convince a customer that its change from the incumbent to the competitor was the correct choice, the shorter the service disruption the better.

For orders of fewer than ten lines, the RBOC has one hour in which to complete the coordinated cutover and report the completion of the hot cut to the competing carrier.[45] The Commission stated that on-time hot cut performance at a level of 90 percent or greater is sufficient to permit carriers to enter and compete in a meaningful way in the local exchange

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[42] *Bell Atlantic New York Order,* ¶ 291.

[43] *Bell Atlantic New York Order*, ¶ 291, fn. 925.

[44] *Id.*

[45] *Id.* at ¶ 292.

market.[46] The issue of hot cuts is quite illuminating as to effects that BOC's inadequate performance will have in the development of local competition.. Deficiencies in hot cut performance will impose costs on the CLEC, try the end user's patience and provide competitive benefits to the BOC. According to a survey conducted by the Competition Policy Institute, the "[s]trongest impediment to switching [LECs] comes from concern about service interruptions during the change over."[47]

Thus, BOCs have a perverse disincentive to provide lower quality service in regard to hot cuts, at least up to the boundaries that the Commission's "minimally acceptable standards" will provide. One of the key issues in the appeal by AT&T Corp. and Covad Communications of the *Bell Atlantic New York Order* is that the Commission set the bar too low in regard to hot cut performance by failing to focus the performance standards on what is technically and commercially feasible for the BOC.[48] For instance, the standards in the *Bell Atlantic New York Order* already constituted a departure from performance standards that the New York Public

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[46] *Id.* at ¶ 298.

[47] Evaluation of the United States Department of Justice, *In re: Application of New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in New York,* CC Docket No. 99-295 (November 1, 1999), p. 18, n. 39.

[48] *See* Brief for Appellants AT&T Corp. and Covad Communications Company at pp. 43 to 49, *AT&T Corp., et al., v. Federal Communications Commission* (No. 99-1538)(D.C. Cir)(Appellants argue that substantially better performance standards were "technically feasible" in comparison to those the FCC found minimally acceptable).

Service Commission, and Bell Atlantic itself, felt were capable of being achieved.[49] AT&T astutely observes that BOCs have every incentive to perform down to the standard, *i.e.*, allow as many outages as it can consistent with regulatory requirements.[50]

The evidence in recent Section 271 applications suggest this is the case. Bell Atlantic's performance constituted the minimally acceptable showing.[51] SBC's performance has been even worse. As the Department of Justice noted, "SBC's performance with regard to 'hot cuts' is worse than Bell Atlantic's performance in New York, which the Commission concluded was 'minimally acceptable.'"[52]

D. Maintenance and Repair

The provisioning of a loop does not end when a loop is "delivered" to the CLEC. There are both maintenance and repair issues that arise after the loop is accepted by the CLEC. These issues may appear both immediately after the loop is provisioned, or may occur some time after the actual provisioning.

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[49] *Id.* at p. 48. For instance, the NY PSC had set a minimum standard of 95 percent on-time performance, not the 90% standard eventually established. *Bell Atlantic New York Order* at ¶ 292.

[50] *AT&T SBC 271 Comments*, p. 28.

[51] *BANY Order*, ¶ 309.

[52] CC Docket 00-65, February 14, 2000 Evaluation of the United States Department of Justice, p. 27.

1. Functionality

The ILEC must offer access to maintenance and repair interfaces and systems at parity with the access its retail divisions has.[53] This includes the ability to conduct mechanized loop tests, create trouble tickets, determine the status of a trouble ticket and request a trouble report history.[54] This Commission has noted that "without electronic access for competing carriers, the BOC's ability to correct trouble reports while on line with the customer would be a 'crucial competitive advantage.'"[55] Thus, of particular concern is the CLEC ability to use electronic interfaces to submit trouble tickets for unbundled network elements.[56]

The Commission has also indicated that "a BOC would afford carriers a more complete opportunity to compete by offering an integratable, application-to-application maintenance and repair interface."[57] The Commission, however, declined to require that Bell Atlantic offer such a system. It is hoped that given the issues raised in this proceeding in regard to timing of

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[53] *BANY Order*, ¶ 213.

[54] *Id.*

[55] *Id.* at fn. 677.

[56] There was a claim by Prism in the *BANY Order* proceeding that it had to manually submit trouble tickets because the Repair Trouble Administration System could not be used for UNEs. *Id.* at fn. 683.

[57] *Id.* at 215.

maintenance and repair of loops, the Commission will require such an application-to-application interface. Such an interface could only help to expedite resolution of trouble reports.

CLECs should also have the ability to be able to open trouble tickets immediately on recently-completed service orders.[58] An improperly provisioned loop will already be the cause of much consternation for the customer; a delay in getting the trouble addressed will only compound the frustration.

2. Response Times

Proposed Standard: Parity plus four seconds for response times.

The Commission has found that an ILEC must process trouble inquiries from competing carriers "in substantially the same time and manner as [the ILEC] processes inquiries concerning its own retail customers."[59] The Commission noted that for CLECs to compete effectively they must be able to:

> diagnose and process customer trouble complaints with the same speed and accuracy that [the ILEC] diagnoses and processes complaints from its retail customers. A slower process can lead to customer perception that the competing carrier is a less efficient service provider than the BOC.[60]

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[58] Covad noted in the *BANY* proceeding that it was unable to open a trouble ticket for at least 24 hours after the due date. *Id.* at ¶ 216.

[59] *BANY Order*, ¶ 217.

[60] *Id.*

The New York Public Service Commission has implemented a performance standard of "parity plus four seconds" which is the same standard used for pre-ordering OSS response times.[61] Response time covers the number of seconds from the issuance of a query to the receipt of a response by the requesting carrier. The four seconds is added for additional security measures and differences in functionality involved for the CLEC to access the ILEC's OSS.[62]

3. Time to Restore

Proposed Standard: Parity with retail.

The Commission "has stressed that a BOC is obligated to repair trouble for a customer of a requesting carrier in substantially the same time that it takes to repair problems for experienced by its own customers."[63]

A key consideration in this area is the missed repair appointments. In New York, in the time period while its Section 271 application was being reviewed, Bell Atlantic was missing loop repair appointments at a higher rate for CLECs in comparison to its retail operations.[64]

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[61] *Id.*

[62] *Id.* at ¶ 218.

[63] *Id.* at ¶ 220.

[64] *Id.* at 311.

4. Quality of Work Performed

Proposed Standard

For hot cut loops – Trouble Reports on no more than 2% of orders within 7 days.

It is, of course, vital not only that the work be done quickly, but that it be done well. As the Commission has observed:

> [i]n order to compete effectively in the local exchange market, competing carriers must be able to access maintenance and repair functions in a manner that enables them to provide service to their customers at a level of quality that matches the quality of service that [the BOC] provides its own customers. A competing carrier's customer may become dissatisfied if the customer experiences frequent service problems, especially repeated troubles. In determining the quality of maintenance and repair work performed by Bell Atlantic for competing carriers, we examine the rate of trouble reported by customers of competing carriers as compared with [the BOC's] own retail customers, as well as the rate of repeat reports of trouble.[65]

Another area that needs close scrutiny is the premature closing of trouble tickets by the ILEC. Some ILEC technicians will close out a trouble ticket even if the customer was not back in service if they found no trouble at the specific dispatch location without checking other locations.[66] For these "misdirected dispatch situations," a CLEC would need to open a second trouble ticket to resolve the problem. In New York, however, Bell Atlantic, on its retail side would not close out the report but would attempt to isolate and fix the problem.[67]

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[65] *Id.* at ¶ 223.

[66] *Id.* at ¶ 225.

[67] *NYPSC Order I* at p. 23.

In regard to provisioning of xDSL-capable loops, SBC confirmed that for the three months up to February 2000, CLEC reported troubles within 30 days of the installation of the new loop at a rate much higher than the benchmark permits.[68] Trouble reports were issued on CLEC unbundled xDSL loops within 30 days of installation practically twice as often as trouble reports for SBC.[69] Thus, if CLEC customers are experiencing a high amount of trouble reports coupled with delays in getting these problems addressed, the customer will blame the CLEC regardless of whose fault it is. Ironically, in many cases the customer will return to the very company, the ILEC, whose fault caused both the problem and the delay in addressing the problem. Once again, it cannot be emphasized enough that nondiscriminatory access standards need strict and definite timing requirements to ensure that CLECs and their customers are not being disadvantaged.

ILEC provisioning of unbundled loops through hot cuts has been equally dismal. While SBC is marginally compliant on this metric for CHC orders,[70] its performance on FDT orders is poor.[71] SBC exceeded the 2% standard in January and February of this year, and its overall

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[68] *AT&T SBC 271 Comments*, p. 22.

[69] *Sprint SBC 271 Comments*, p. 18.

[70] It should be noted that SBC's average CHC trouble report rate is 1.7% while Bell Atlantic's was 0.7%, and even in its worst month, Bell Atlantic only had a rate of 1.26%. *AT&T SBC 271 Comments*, p. 37; *April 26, 2000 TX PUC SBC 271 Comments*, p. 19.

[71] SBC uses two types of methods to provide hot cuts. SBC uses two hot cut processes. One is fully coordinated hot cut ("CHC") process which is to be used for conversions of orders of twenty or more lines. These orders are manually processed and require intensive coordination and communication between SBC and the CLEC. Thus, they are performed outside of normal

performance rate for January-March 2000 is 2.45%.[72] In February, SBC's trouble report rate was 3.28%.[73]

5. Escalation Procedures

In addition, given the above-referenced problems, the Commission should establish repair escalation procedures to complement the performance metrics. It is important that these rules function automatically without imposing administrative and regulatory burdens on competitors.[74] The standards suggested below should govern customer outages caused by service problems in UNEs including loops, transport, UNE-P and in resale services. In the case of outages occurring in the hot cut process, CLECs should be entitled to hourly updates on repair status. Specifically, Joint Commenters propose that the Commission adopt the following rules:

- If trouble occurs within network elements provided by the ILEC, the CLEC will first determine whether the trouble is in the CLEC's own equipment and/or facilities or those of the End User. If the CLEC determines the trouble is in the ILEC's equipment and/or facilities, the CLEC will issue a trouble report to the ILEC via the ILEC's electronic interface.

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business hours. FDT cuts are used for cuts of fewer than 20 lines and are performed during normal business hours since they can be processed without the manual intervention of SBC representatives. *USDofJ SBC 271 Evaluation* at 27.

[72] April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 23.

[73] *Id.*

[74] The Commission made this very point in the *Bell Atlantic §271 Order* when discussing the performance assurance plans adopted by the New York Commission. *See Bell Atlantic §271 Order* ¶ 12.

- If the ILEC trouble ticket remains open after 4 hours, the ILEC will proactively escalate the trouble ticket to a first line supervisor. Such supervisor will provide the CLEC with an Action Plan to the resolve trouble within the next 7 hours.

- If the trouble ticket remains open after 8 hours, the ILEC proactively will escalate the trouble ticket to a Manager. Such Manager will update the CLEC within 12 hours after a trouble ticket is opened with an action plan to resolve the trouble.

- If a trouble ticket remains open after 12 hours, the ILEC will proactively escalate the trouble ticket to the Director level. Such Director will update the CLEC within 16 hours after a trouble ticket is opened with an action plan to resolve the trouble. At this time the CLEC may request hourly updates from the ILEC.

- If a trouble ticket remains open after 24 hours, ILEC will proactively update the trouble ticket to a Vice President. Such Vice President will update the CLEC and agree to a same day vendor meet at location(s) necessary to resolve the trouble within 8 business hours.

- All trouble tickets will remain open until the ILEC , through the same electronic interface used to submit the trouble ticket, notifies CLEC that trouble ticket has been resolved, and the CLEC within 2 hours confirms resolution or denies resolution, or 8 hours within regular business hours.

III. LOOP CONDITIONING STANDARDS

A. ILECs Must Condition Loops In A Timely Fashion

In its *Fourth Report and Order,* the Commission required ILECs to remove existing encumbrances from copper loops upon the request of a CLEC that wishes to provide advanced services.[75] The Commission required ILECs to remove encumbrances even if the ILEC itself does not intend to offer DSL services to the customer on the loop.[76] Joint Commenters urge the

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[75] *Fourth Report and Order*, ¶ 83.

[76] *Id.*

Commission to strengthen the requirement that ILECs condition loops by additionally requiring that they do so in a timely fashion pursuant to specified performance standards.

The process of conditioning an underground loop involves a technician driving to a manhole, preparing the manhole so it is safe to enter, entering the manhole, opening the splice enclosure, splicing, leaving manhole, loading the truck, and driving back to the central office. Joint Commenters estimate that this activity should not take more than one hour. Conditioning an aerial loop involves climbing a telephone pole instead of entering a manhole, which should take less time. Accordingly, the Commission should require that ILECs condition loops within no more than several hours after a request by a CLEC.

B. ILEC Loop Conditioning Prices Must Be Consistent With TELRIC

The Commission has recognized that "incumbent LECs may have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits."[77] In fact, this is precisely what is happening. ILECs are seeking to impose sky-high rates. For example, SBC is seeking in Michigan to impose $534 for removing a load coil, and $331 to remove a load coil in Oklahoma. Apart from the fact, that there is no reason why the rates between states should vary to such an extent for loop conditioning the magnitude of these

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[77] *UNE Remand Order*, ¶ 194.

proposed charges is shocking. In contrast, Texas permits SBC to charge only $40.55 for removal of load coils.[78]

Joint Commenters urge the Commission to promptly explicitly hold that loop conditioning charges must be based on TELRIC pricing principles, and direct states to set loop conditioning charges based on TELRIC. This will help assure that SBC and other ILECs are not able to impose unreasonable loop conditioning charges.

IV. ILECS SHOULD PROVISION UNES AT THE SAME TIME AS COLLOCATION

In its Petition, ALTS notes that ILECs do not permit CLECs to order loop and interoffice UNEs until collocation has been completed.[79] ALTS requests that the Commission permit CLECs to order loops in a manner that will enable them to provide service at the same time that their collocation space is available.[80]

In the *Collocation Order*, the Commission recognized the significant competitive harm suffered by CLECs whose collocation space is not ready for as long as 6 to 8 months after their initial collocation request is submitted to an ILEC.[81] The situation is made far worse when

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[78] *See* Arbitration Award, Docket Nos. 20272 and 20226 (rel. Nov. 1999), pp. 98-102. The interim Texas rates are subject to refund or surcharge upon approval of permanent rates, and SWBT was ordered to submit TELRIC-based loop conditioning cost studies.

[79] ALTS Petition at 9.

[80] *Id.*

[81] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking,

CLECs must wait an additional period to obtain UNEs. It is Joint Commenters experience that sequential collocation and UNE provisioning can take up to 10. Meanwhile, ILECs are able to plan and rollout services in the same markets without incurring the same delays. Such a result is contrary to the pro-competitive, non-discriminatory goals of the 1996 Act.

In the *Collocation Order*, the FCC concluded that ILECs cannot refuse to consider an application for collocation space submitted by a competitor while that competitor's state certification is pending, or before the competitor and ILEC have entered into a final interconnection agreement.[82] Joint Commenters request that the Commission conclude here that ILECs cannot refuse to process a competitor's order for UNEs before completion and turnover of collocation facilities, and that ILECs must provision collocation and UNEs so that the CLEC obtains them at the same time. CLECs should be able to install equipment and obtain loops in the shortest timeframe possible with minimum downtime. This practice should be required even if the Commission establishes specific intervals within which ILECs must provide collocation.[83]

FCC 99-48 (rel. March 31, 1999), *recon pending* ("*Collocation Order*").

[82] *Collocation Order* at ¶ 53.

[83] In the *Collocation Order*, the FCC did not adopt specific provisioning intervals, but stated that it retained the authority to do so in the future as it deems necessary. *Collocation Order* at ¶ 54

V. THE COMMISSION SHOULD SET FEDERAL PENALTIES FOR ILEC NONCOMPLIANCE

Joint Commenters agree that the Commission should adopt federal penalties for ILEC failure to comply with provisioning rules.[84] The Commission should adopt ALTS' suggestion of self-executing monetary penalties.[85] Penalties in the form of non-recurring charges for provision of collocation space and UNEs would also be appropriate. The Commission should also mandate a reduction in rates that an ILEC charges CLECs for UNEs that increase with delay. The longer the delay, the greater the penalty. The Commission should also provide that most penalties are paid to CLECs to compensate for the harm caused by the delays in provisioning.

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[84] ALTS Petition at 31.

[85] *Id.*

VII. CONCLUSION

For the foregoing reasons, the Commission should grant the ALTS petition.

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