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July 10, 2000

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OFFICE OF THE SECRETARY

Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
TW-A325
Washington, , DC 20554

Re: Reply Comments of DSLnet Communications, LLC; CC Docket Nos. 98-147; 96-98; 98-141; and NSD-L-00; DA 00-891

Dear Ms. Salas:

Enclosed for filing in the above referenced dockets is an original and seven (7) copies of the Reply Comments of DSLnet Communications, LLC.

Please acknowledge receipt by date-stamping the enclosed extra copy of this filing and returning it to the undersigned in the envelope provided. If you have any questions regarding this filing please contact the undersigned counsel at (202) 424-7500.

Sincerely,

Andrew D. Lipman
James W. Ferguson

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

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In the Matter of	)	
	)	
Deployment of Wireline Services 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 and Technology Announce Public Forum on Competitive Access To Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

REPLY COMMENTS OF DSLnet COMMUNICATIONS, LLC

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Dated: July 10, 2000

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SUMMARY

The time is ripe for the Commission to establish nationwide performance standards for the entire loop provisioning process. The comments submitted in this proceeding demonstrate that the Commission has the authority, the necessary historical data, and a more than sufficient record, upon which the Commission can rely in developing the much needed standards. The major ILECS remain uniquely valuable benchmarks for assessing each other's performance. Thus, the Commission should utilize comparative analysis, specifically a combination of best-practices benchmarking and average-practices benchmarking, to promulgate the nationwide performance standards. The use of comparative analysis to promulgate standards will address differences in ILEC capabilities while ensuring that the adopted performance standards are not unnecessarily diluted.

Establishment of national performance standards will hasten the ubiquitous nationwide deployment of advanced services, aid evaluation of section 271 applications, and assist state regulatory authorities in ensuring compliance with the Commission's rules. The Commission should establish standards to ensure that competitive providers can order collocation and unbundled network elements contemporaneously. The Commission should also establish federal penalties for ILEC noncompliance for any performance standards adopted.

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REPLY COMMENTS OF DSLnet COMMUNICATIONS

DSLnet Communications, LLC ("DSLnet"), by undersigned counsel, and pursuant to the Federal Communications Commission ("FCC" or "Commission") Public Notice dated May 24, 2000,[1] respectfully submits these reply comments in response to the "Association for Local Telecommunications Services' Petition for Declaratory Ruling: Broadband Loop Provisioning

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[1] *Pleading Cycle Established for Comments on ALTS Petition for Declaratory Ruling: Loop Provisioning*, DA 00-114 (rel. May 24, 2000).

('ALTS Petition')." DSLnet, an emerging entrant into the competitive local exchange market, provides high-speed data communications and Internet access services using digital subscriber lines, ("DSL"), technology to small and medium sized businesses. DSLnet utilizes the networks of incumbent local exchange carriers ("ILECs") in the provisioning of DSLnet's services.

I. THE COMMISSION HAS AUTHORITY TO IMPLEMENT MINIMUM STANDARDS APPLICABLE TO EACH STAGE OF THE LOOP PROVISIONING PROCESS, FROM PRE-ORDERING THROUGH POST-DELIVERY, FOR PROVISIONING OF BOTH VOICE-GRADE AND HIGH-CAPACITY, DIGITALLY-ENABLED LOOPS.

Development of performance standards for the entire loop provisioning process is clearly within the Commission's jurisdiction. In *AT&T Corporation v. Iowa Utilities Board*,[2] the U.S. Supreme Court recognized that "§ 201(b) explicitly gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."[3] The Court found that the FCC has rulemaking authority to "carry out the 'provisions of this [Communications] Act,' which includes §§ 251 and 252, added by the Telecommunications Act of 1996."[4] It is beyond dispute that access to unbundled network elements such as the loop fall squarely within section 251 of the Act.[5]

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

[3] *Iowa Utilities Board*, 525 U.S. at 380.

[4] *Id.* at 378.

[5] 47 U.S.C. § 251(c)(3).

The Supreme Court noted that while state commissions are given certain roles under the 1996 Act, *e.g.*, approval of interconnection agreements, "these assignments, like the rate-establishing assignment just discussed, do not logically preclude the Commission's issuance of rules to guide the state-commission judgments."[6] As noted by Rhythms Netconnections Inc. in its Comments in Support of ALTS' Loop Petition,[7] the Commission may adopted federal regulations that:

> [F]acilitate administration of sections 251 and 252, expedite negotiations and arbitrations by narrowing the potential range of dispute where appropriate to do so, offer uniform interpretations of the law that might not otherwise emerge until after years of litigation, remedy significant imbalances in bargaining power, and establish the minimum requirements necessary to implement the nationwide competition that Congress sought to establish.[8]

As demonstrated by the overwhelming majority of comments submitted in support of the ALTS Petition, development of national loop provisioning rules will meet each of the aforementioned objectives.

The time is ripe for the Commission to establish nationwide performance measures. The Commission has thus far refrained from establishing nationwide performance measure because it did not believe that it had developed a sufficient record on which to do so. To ensure that any

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[6] *Iowa Utilities Board*, 525 U.S. at 385.

[7] Rhythms Netconnections Inc. Comments in Support of ALTS Loop Petition at 4 (Rhythms).

[8] *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325, ¶ 41 (1996)("*Local Competition Order*").

performance measures that it adopted were fair and reasonable, the Commission wanted the performance standards to be grounded in historical data.[9] In the intervening two years since passage of the *Performance Measurement Order* the Commission has developed the necessary historical data, and now has a more than sufficient record, upon which the Commission can rely in developing the necessary performance standards. Establishment of federal performance measures are no longer "premature," in fact, development of federal performance measures "could not . . . come at a more fortuitous time."[10]

The Commission and state regulatory agencies are now well versed in the use of performance standards and the concomitant benefits derived from such use. Both the Commission and several states[11] have utilized performance data in fulfilling their regulatory responsibilities. The Commission has relied on performance data in evaluating Section 271 applications, and in determining that Bell Atlantic failed to meet its post Section 271

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[9] "[A]ny model performance standards should be grounded in historical experience to ensure that such standards are fair and reasonable. Because our present record lacks the necessary historical data, we believe that it would be premature for us to develop standards at this point." *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56, 13 FCC Rcd. 12817 at ¶ 125 (1998)("*Performance Measurement Order*").

[10] Joint Comments of CoreComm Inc., MGC Communications, Inc. d/b/a MPower Communications Corp., and Vitts Network, Inc. ("CoreComm Joint Comments").

[11] *See* Bell Atlantic Comments at pp. 6-9.

obligations.[12] The Commission also uses performance standards in its evaluation of carrier compliance with merger conditions.[13] The Commission, discussing the importance and benefits of performance standards in furthering the goals of the 1996 Act, stated that:

> [T]he Carrier-to-Carrier Performance Plan also partially alleviates the Applicants' increased need and incentive to discriminate against rivals following the merger. By requiring the merged firm to report results of 20 performance measures, and achieve the agreed-upon standard or voluntarily make incentive payments, the plan provides heightened incentive for the company not to discriminate in ways that would be detected through the measures. Competing carriers operating in or contemplating entry into SBC/Ameritech territory will have an measure of confidence that the company will not engage in discrimination that would be detected through such measures. If the results reveal unequal treatment, the voluntary payment scheme, as NorthPoint notes, will 'create a direct economic incentive for SBC/Ameritech to cure performance problems quickly.'[14]

Thus, the Commission is no stranger to performance standards and their usefulness. The Commission can draw upon the record created in its Section 271 dockets, its merger analysis dockets, as well as the record before the various state commissions that have crafted performance standards to draft appropriate nationwide performance standards. The Commission has both the

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[12] *Bell Atlantic-New York, Authorization Under Section 271 of the Communications Act to Provide In-region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, Order, FCC Rcd 5413 (2000). The Commission noted how its quick response, in conjunction with the New York Public Service Commission, when Bell Atlantic developed performance problems, helped alleviate the problem. *SBC 271 TX Order* at ¶ 436, fn. 1278.

[13] *In Re Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act*, Memorandum Opinion and Order, FCC 99-279, ¶ 406 (rel. October 8, 1999)("*SBC/Ameritech Merger Order*").

[14] *Id.* at ¶ 432.

authority to impose these much needed performance standards, and the historical data to ensure that such standards are fair and reasonable.

II. THE COMMISSION SHOULD UTILIZE COMPARATIVE ANALYSIS TO PROMULGATE STANDARDS THAT ADDRESS DIFFERENCES IN ILEC CAPABILITIES WHILE ENSURING THAT THE ADOPTED PERFORMANCE STANDARDS ARE NOT UNNECESSARILY DILUTED.

The Commission should utilize a combination of best-practices benchmarking[15] and average-practices benchmarking to promulgate nationwide performance standards. As this Commission has noted, "best-practices benchmarking forms the foundation for the Commission's analysis of technical feasibility and collocation issues, average-practices benchmarking is the Commission's primary tool for monitoring service quality and detecting unreasonable or discriminatory cost or practices."[16] Thus, a combination of these comparative approaches would assist the Commission in promulgating standards that address differences in ILEC capabilities while ensuring that the adopted performance standards are not unnecessarily diluted.

The Commission has found "that the major incumbent LECs (RBOCs and GTE), because they are of similar size and face similar statutory obligations and market conditions, remain uniquely

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[15] "Under the 'best practices' policy, in the absence of proof to the contrary in a particular case the FCC assumes that each ILEC can reasonably comply with a requirement that has been found acceptable for any other ILEC." Comments of Network Access Solutions Corporation on Petition for Declaratory Ruling By Association for Local Telecommunications Services at 7 (NASC Comments).

[16] *SBC/Ameritech Merger Order* at ¶ 134.

valuable benchmarks for assessing each other's performance."[17] Thus, it is not surprising that the Commission "employed 'best-practices' benchmarking in implementing the local competition provisions of the 1996 Act," finding "that successful interconnection at a particular level of quality in one LEC's network is substantial evidence of the feasibility of interconnection at the same level of quality in another LEC's network."[18] Other parties have also found the use of comparative analysis to be of substantial usefulness. As the Commission has previously noted, "courts, federal and state regulators, and competitors have consistently recognized comparative practices analysis as a crucial tool, and have employed such analyses, to set industry standards and policy, detect discriminatory behavior, and promote competition."[19]

Use of comparative analysis in this proceeding is appropriate given the issues raised herein. For example, the most common ILEC explanation for sequential imposition of provisioning periods is that orders cannot be entered into ILEC systems unless identified by a Carrier Facility Assignment ("CFA") number.[20] NEXTLINK notes, however, that it convinced one ILEC to accept loop orders before collocation was completed, thereby shortening the delivery interval for the requested loops.[21]

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[17] *SBC/Ameritech Merger Order* at ¶ 103.

[18] *Id.* at ¶ 131.

[19] *SBC/Ameritech Merger Order* at ¶ 125.

[20] *ALTS Petition* at p. 9.

[21] KMC Joint Comments at pp. 7-8.

SBC states that it allows CLECs to place orders for UNEs prior to completion of their collocation arrangement.[22] Similarly, U.S. West "pre-provisions firm orders for private transport services to and from a CLEC collocation prior to the collocation being ready-for-service."[23] Thus, comparative analysis can demonstrate practices that are feasible for ILECs, despite protestations to the contrary,[24] and help devise ways to expedite delivery of services to the CLEC and ultimately to the consumer.

The Commission does not have to rely solely on a "best of class" approach. Because different benefits are derived from the use of best-practices benchmarking and average-practices benchmarking, a combination of these comparative approaches would help the Commission promulgate standards that address differences in ILEC-capabilities while at the same ensure that the promulgated rules are not unnecessarily diluted.

Some ILECs have argued that parity should be the prevailing standard.[25] The Commission has already rejected this reasoning having found that "parity considerations cannot substitute for all

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[22] Opposition of SBC Communications Inc. to ALTS' Petition for Declaratory Ruling Regarding Broadband Loop Provisioning at p. 6 (SBC Comments).

[23] Opposition of U S West Communications, Inc. at p. 8 (U S West Comments).

[24] "For example, ILECs insist on forcing competitors to order high-capacity loops as a sequential step after the completion of collocation build-out despite the fact that it is technically feasible and inherently practical to process such orders in parallel." Comments of AT&T at p. 6.

[25] SBC Comments at pp. 20-21.

forms of benchmarking"[26] The limitations of parity as a national standard is particularly pronounced in innovative markets. As the Commission has observed:

> [I]f the innovation requires a new form of interconnection or access, '[t]he incumbent can slow-roll the innovator, declining to provide the new kind of input, until the incumbent has a similar or leapfrogging innovation available.' If a competitive LEC seeks the provision of properly conditioned loops in order to provide xDSL service, an incumbent LEC which is not ready to provide xDSL service itself would have the incentive to deny this competitor the properly conditioned loops. In this circumstance, parity rules would provide no remedy for the competitive LEC, for the incumbent LEC would not be providing to its retail arm anything that it was denying its competitor. Exclusive reliance on parity rules, therefore, could slow the provision of innovative services to the public.[27]

This has been borne out recently as evidenced by the high costs for conditioned loops in Texas. SBC was provisioning loops without conditioning at parity with retail for five consecutive months, but for loops with conditioning it was substantially out of parity.[28] SBC attempted to justify this performance by arguing that its charges for line conditioning have understated demand for its service, thereby limiting the number of its customers that seek to use conditioned loops.[29] As Sprint noted:

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[26] *SBC/Ameritech Merger Order* at ¶ 176.

[27] *Id.* at ¶ 177.

[28] CC Dokcet 00-65, April 26, 2000 Petition to Deny of Sprint Communications Company, L.P. at p. 12 ("*Sprint SBC 271 Comments*").

[29] *Sprint SBC 271 Comments* at pp. 12-13.

> [T]his is no reason to excuse SWBT's performance. Indeed, it is cause for concern because it shows that by insisting on high loop conditioning charges for its own customers, SWBT can suppress demand for its own services which, in turn, gives it the opportunity to degrade service to CLECs without significantly impacting its own service to its retail customers. In other words, by limiting the amount of SWBT customers who rely on conditioned xDSL loops, while CLEC customers rely on such loops to a far greater extent, SWBT can harm a significant number of CLEC customers by providing uniformly poorer service for conditioned xDSL loops with little damage to its own business interests.[30]

Thus, parity, without more, is not enough. ILEC claims that it is providing service at parity could be used to mask anti-competitive practices. For instance, if SBC is charging prohibitive loop conditioning rates, it can push competitors out of the advanced services market while still arguing that it is providing service at parity. The high loop conditioning rates will be of no import to SBC's affiliate which can rely on the Project Pronto architecture and line sharing to facilitate its provision of xDSL service. Thus, SBC can effectively delay the introduction of competitive offerings without technically violating the mandates of "parity."

Parity rules are also of little use where there is no retail analogue for the service that the ILEC provides to the CLEC. US WEST argues that there is "no retail service analogue to the sale of unbundled loops."[31] US WEST's argument actually supports the need for implementing standards for ordering and provisioning of unbundled network elements. Since there is no retail analogue to provide a comparative basis, performance standards are even more necessary. Where there is no

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[30] *Id.* at p. 13.

[31] US WEST Comments at p. 4.

retail analogue the ILEC must "demonstrate that the access it provides to competing carriers would offer an efficient carrier a 'meaningful opportunity to compete.'"[32] For example, hot cuts have no retail analogue,[33] so the Commission utilizes performance measures to evaluate a carrier's "hot cuts" performance.[34] Without a set standard it would be very difficult to evaluate performance in this area, and any determination as to whether there is a meaningful opportunity to compete would be purely subjective.

III. ESTABLISHMENT OF NATIONAL PERFORMANCE STANDARDS WILL HASTEN THE UBIQUITOUS NATIONWIDE DEPLOYMENT OF ADVANCED SERVICES, AID EVALUATION OF SECTION 271 APPLICATIONS AND ASSIST STATE REGULATORY AUTHORITIES IN ENSURING COMPLIANCE WITH THE COMMISSION'S RULES.

DSLnet applauds the states that have implemented performance standards and cites this as a perfect indication of the large record available for the Commission to draw upon in drafting nationwide performance standards.[35] The state standards, however, are not uniform, and the lack of uniformity has resulted in confusion, uncertainty, and a lack of comparable service quality.

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[32] *SBC TX 271 Order* at ¶ 44.

[33] *Id.*at ¶ 258.

[34] *Id.* at ¶¶ 262-263.

[35] Bell Atlantic Comments at pp. 6-8; SBC Comments at p. 23.

Additionally, as one commenter noted, "[i]n the absence of national standards 'ILECs have accorded themselves a competitive advantage.'"[36]

The danger inherent in the lack of a national standards is clearly displayed in the context of the SBC Section 271 TX proceeding's consideration of SBC's "hot cuts" performance, under the meaningful opportunity to compete standard.[37] The Commission noted that differences in performance standards make direct comparison with the performance discussed in prior orders difficult, if not impossible.[38] The proceeding at various times had three different performance standards for hot cuts: the performance metrics utilized by the New York Public Service Commission ("NYPSC"), the standards adopted by the Commission in its *Bell Atlantic New York Order*,[39] and the performance metrics utilized by the Texas Public Utility Commission ("Texas PUC"). For instance the Texas PUC utilized a provisioning benchmark that required 100% of orders of 24 lines or fewer to be completed within two hours, while the FCC required that 90% of hot cut orders of fewer than ten lines be completed within one hour.[40]

Varying standards results in confusion and disagreement over the proper interpretation of

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[36] AT&T Comments at p. 6.

[37] *SBC TX 271 Order* at ¶ 258.

[38] *Id.*

[39] *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*, FCC 99-404, CC Docket 99-295, Memorandum Opinion and Order (December 22, 1999).

[40] *SBC TX 271 Order* at ¶ 262.

the performance data and even over which performance measures are applicable. Initially, SBC argued that it met performance standards in regard to hot cuts. It was subsequently shown that SBC only "met" the performance standards by using a "mix and match" approach to the standards.[41] Utilizing state-specific approaches also creates a danger that the standards will be unnecessarily diluted. For instance, the TX PUC performance standards are based on two-hour completion intervals and orders of 1-24 lines. But most orders are for fewer than 10 lines, and on average are for fewer than five loops. Orders for 20 or more loops are very rare, yet the Texas PUC used the time it would take to cutover a 24 loop order as the basis of its performance standard for cutover intervals. Thus, it set a two hour time frame for cutovers which may seem appropriate for orders of over 24 lines, but, as several commenters pointed out, would be much too long for the vast majority of orders.[42]

Ultimately, SBC finally showed that it could disaggregate its data such that an evaluation could be made under the same standards utilized in the *Bell Atlantic New York Order*. The Texas PUC then spent much of its analysis sifting the data through the standards of the *Bell Atlantic New York Order*.[43] The Commission ended up evaluating SBC's hot cut performance under the interval

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[41] CC Docket 00-65, April 26, 2000 Supplemental Comments of AT&T Corp. at p. 36 ("*AT&T SBC 271 Comments*").

[42] *SBC 271 TX Order* at ¶ 744.

[43] *See, generally,* CC Docket 00-65, April 26, 2000 Evaluation of the Public Utility Commission of Texas.

it established in the *Bell Atlantic New York Order*.[44] Unsurprisingly, the Texas PUC is revising its hot cut interval, and the new interval is strikingly similar to the one in the *Bell Atlantic New York Order*.[45] Ultimately, only when the data was evaluated under the federal standard was every party on the same page, enabling a considered and thorough evaluation to be conducted.

State standards alone do not alleviate the problem of discriminatory treatment. For instance, the Commission found that "Bell Atlantic's performance in providing order acknowledgments, confirmation and rejection notices, and order completion notices for UNE-Platform local service orders deteriorated following Bell Atlantic's entry into the New York long distance market."[46] This occurred despite the presence of the state standards set by the New York Public Service Commission. In Texas, despite the presence of state standards set by the Texas PUC, SBC was still failing to meet crucial performance measures.[47] These performance deficiencies occurred in states where the carrot of the 271 grant, or the removal thereof, was very much a consideration. One can only imagine ILEC performance deficiencies in states where there are no performance standards at all. Furthermore, this Commission has recently recognized the value in a prompt "coordinated two-

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[44] *Id.* at ¶¶ 263-264.

[45] *Id.* at ¶ 263, fn. 744.

[46] *In the Matter of Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, FCC 00-92, 15 FCC Rcd. 5413 at ¶ 7 (2000).

[47] Joint Comments of CoreComm Inc., MGC Communications, Inc. d/b/a MPower Communications Corp., and Vitts Network, Inc., at p. 42.

pronged enforcement response,"[48] when Bell Atlantic developed performance problems, and the benefits of "cooperative state and federal oversight and enforcement can address any backsliding that may arise with respect to SWBT's entry into the Texas long distance market."[49] Clearly the Commission recognizes that it needs to take a pro-active role in conjunction with the states.

As the Commission has noted, it is often handicapped when "new and unresolved interpretive disputes" arise in a Section 271 proceeding.[50] Much of the SBC Section 271 TX proceeding was spent debating which standard to use, although as the Commission correctly noted, a Section 271 proceeding is not the best forum for the resolution of such disputes, especially given the tight time frame.[51] The Commission correctly stated that these issues of general application are more appropriately the subject of "industry-wide notice-and-comment rulemaking."[52] The ALTS Petition, and the proceeding it has initiated, provides the opportunity for the Commission to address these issues. The Commission can use this proceeding to clarify and expand upon existing rules, and to initiate expedited rulemakings, as may be appropriate, to consider other needed rules. The existence of clear rules at the start will facilitate evaluation of Section 271 application and preclude much of

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[48] *SBC 271 TX Order* at ¶ 436, fn. 1278.

[49] *SBC 271 TX Order* at ¶ 436.

[50] *SBC 271 TX Order* at ¶ 23.

[51] *Id.*

[52] *Id.*

the posturing that takes place in such proceedings. The focus will be solely on the indisputably applicable performance standards and whether they have been met.

The issue of loop provisioning standards is not suited for *ad hoc* complaint proceedings. The Commission has recognized that two-party adjudications are not suitable to resolve issues where many carriers have an interest in the issues.[53] Many of the thirty parties that filed comments supporting ALTS' request for national standards have a direct interest in the eradication of the ongoing intolerable loop provisioning delays.[54] Additionally, as one commenter noted, the use of complaint proceedings will be ineffectual given the lack of performance standards and penalties.[55] The Commission first needs to establish these standards and penalties, and then use the complaint process to adjudicate discrete disputes.

IV. THE EXPEDITED IMPLEMENTATION OF NATIONAL STANDARDS IS VITALLY IMPORTANT FOR THE DEVELOPMENT OF UNE-BASED COMPETITIVE SERVICES.

National standards for timely loop provisioning are not only desirable, but vital. Continued "[t]oleration of national variance in the availability of unbundled loops, the essential input for all competitive providers of telecommunications services, will only serve to deter the continued roll-out

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[53] *American Telephone and Telegraph Company v. Federal Communications Commission*, 978 F.2d 727, 732 (D.C.Cir. 1992).

[54] @Link Joint Comments at 3-4; Allegiance Comments at 13; AT&T Comments at 4; Covad Comments at 6, 11; CPI Comments at 1, 12; Focal Comments at 2-3; McLeodUSA Comments at 1; Prism Comments at 9; Rhythms Comments at 8.

[55] WorldCom Comments at p. 15.

of ubiquitous advanced services."[56] As the Commission has noted, "the ability of requesting carriers to use unbundled network elements, including various combinations of unbundled network elements, is integral to achieving Congress' objective of promoting rapid competition to all consumers in the local telecommunications market."[57] Despite the crucial nature of access to UNEs, nearly four years after the enactment of the Telecommunications Act of 1996, loops provided by incumbent LECs to competitors as unbundled network elements constitute less than one percent of total switched lines.[58]

A well-developed record has already been produced in this proceeding demonstrating the need for national loop provisioning standards, particularly in areas involving collocation, loop conditioning, and DLC/fiber loops. The record encompasses not only the anecdotal and documentary evidence produced in this proceeding, but also the evidence produced in other Commission proceedings considering related issues. The data indicates, however, that we are not that much closer to the goal of viable, facilities-based local competition than we were four years ago. Even in states where Section 271 approval has been granted, such as Texas, viable UNE-based competitive entry has not developed. As recently as February of this year, the Department of Justice

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[56] NEXTLINK Comments at p. 5.

[57] *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 at ¶ 5 (November 5, 1999) ("*UNE Remand Order*").

[58] ASCENT Comments at p. 3.

concluded that "markets for local services in Texas are not fully and irreversibly open to competition by carriers seeking to offer advanced services using unbundled xDSL-capable loops, or by carriers seeking to offer services using unbundled voice grade loops." The experiences documented by the commenters in this proceeding, demonstrate that these are not isolated problems, but problems that permeate every stage of the loop provisioning process in every region of the United States.

National standards will ensure that no area of the U.S. or particular market segment is underserved. Local competition should be a reality not only in New York City or Dallas, but in rural Nevada as well. Without Commission local competition through access to UNEs will remain a distant reality.

V. THE COMMISSION SHOULD REQUIRE ILECS TO PROVISION COLLOCATION AND UNES CONTEMPORANEOUSLY

Numerous commenters have outlined the need for Commission to establish a requirement that competitive providers be allowed to order all loops in a manner that will enable them to immediately provide service at the time that their collocated equipment becomes operational. The feasibility of this much needed requirement is also supported by the record in this proceeding. For instance, SBC states that it allows CLECs to place orders for UNEs prior to completion of their collocation arrangement.[59] US West pre-provisions firm orders for private transport services to and from a CLEC collocation prior to the collocation being ready-for-service.[60] Similarly, NEXTLINK

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[59] SBC Comments at 6.

[60] US West Comments at 8. US West also provisions administrative lines to a CLEC collocation before the collocation is "lit." *Id.*

noted it has been successful in convincing an ILEC to accept loop orders before collocation delivery dates with no resulting disruption to the ILEC's operations.[61] These practices, clearly display the feasibility of contemporaneous provisioning of UNEs and collocation. The establishment of federal rules mandating the contemporaneous ordering and subsequent provisioning of UNEs and collocation will enable competitive providers to rollout their services in a timely manner, which will promote the pro-competitive goals of the 1996 Act.

Bell Atlantic argues that it cannot process a CLEC's order for transmission facilities from a collocation cage unless the order indicates the termination points for those facilities, and that the termination point cannot be determined until the CLEC's collocation arrangement has actually been installed and its connecting facilities have been inventoried.[62] Bell Atlantic also stated that to try to predict the ultimate termination point before a facility installation is complete would be a "waste of time" because as CLECs reconfigure their equipment during installation, the final designation of the termination point often changes.[63] As noted above, the record establishes that contemporaneous provisioning is, in fact, allowed by other ILECs. Moreover, changes in termination points are not as common as Bell Atlantic suggests. CLECs, eager to rollout services, will not change their termination points when they know that they would bear the potential

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[61] KMC Joint Comments at pp 6-7.

[62] Bell Atlantic Comments at 14.

[63] *Id.*

competitive and financial costs that may result from any delay in provisioning that any such change would present.

Furthermore, Bell Atlantic's position is inconsistent with the non-discriminatory goals of the 1996 Act. ILECs have the advantage of being able to plan and rollout services without incurring any delays, and CLECs should have this same opportunity. Even if CLECs change a final termination point during the provisioning process, the inconvenience posed to ILECs is not comparable to the market harms suffered by CLECs when they finish collocation and are forced to automatically incur unnecessary delays in obtaining UNEs even if their termination point does not change. Accordingly, potential changes in termination points is a insufficient reason for requiring all CLECs to incur unnecessary delays.

VI. ADOPTION OF FEDERAL PENALTIES FOR ILEC NONCOMPLIANCE IS SUPPORTED BY THE RECORD

There is broad agreement that the Commission should establish federal penalties for an ILEC's failure to comply with provisioning rules.[64] DSLnet supports the suggestion of Network Access Solutions Corporation, that the Commission should use the process by which monetary forfeitures may be levied under §1.80 of the Commission's Rules to assess forfeitures for violation

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[64] *See* ASCENT Comments at 10; Rhythms Netconnections Inc. Comments at 11; NEXTLINK Communications, Inc., KMC Telecom, Inc., NewSouth Comments at 20; Jato Comments at 7; Focal Comments at 7-8; Time Warner Comments at 12; Network Access Solutions at 14; Allegiance at 16; BlueStar Comments at 8; Focal Comments at 7; Network Access Solutions Corporation Comments at 14.

of the provisioning requirements established in this proceeding.[65] DSLnet also supports the suggestion of RCN that penalties could consist of the waiver of some, or all, non-recurring charges related to the provisioning of collocation space and UNEs, and that penalties could be structured to increase in relation to the length of delay. The Commission "should make it clear that it will set substantial penalties for continued [ILEC] intransigence . . ."[66] DSLnet encourages the Commission to make enforcement of penalties a priority for the newly formed Enforcement Bureau, or, alternatively, permit states to enforce these penalties.

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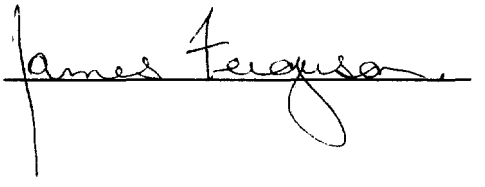
[65] Network Access Solutions Corporation Comments at 14.

[66] WorldCom Comments at p. 3.

VII. CONCLUSION

For the reasons stated above, DSLnet urges the Commission to establish a federal standard for each stage of the loop provisioning process so that the pro-competitive provisions of the Telecommunications Act can be implemented and the American consumer can reap the benefits of competition.



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I, Joan C. Hall, hereby certify that on this 10th day of July 2000, copies of the Reply Comments of DSLnet Communications, LLC were delivered by hand and First Class Mail to the following persons listed on the attached list.

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