DOCKET FILE COPY ORIGINAL
FCC MAIL ROOM

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 NOV 23 A 10:23
RECEIVED

In the Matter of	)	
	)	
Performance Measurements and Standards for Unbundled Network Elements and Interconnection	)	CC Docket No. 01-318
	)	
Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance	)	CC Docket No. 98-56
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling	)	CC Docket Nos. 98-147, 96-98, 98-141

NOTICE OF PROPOSED RULEMAKING

Adopted: November 8, 2001 **Released:** November 19, 2001

Comment Date: 30 Days after Federal Register Publication of this Notice
Reply Date: 21 Days after the Comment Date

By the Commission: Chairman Powell and Commissioners Copps and Martin issuing separate statements.

TABLE OF CONTENTS

Paragraph

I. INTRODUCTION **1**

II. BACKGROUND **8**

III. LEGAL AUTHORITY, ENFORCEMENT AND SCOPE **14**

A. FEDERAL AUTHORITY 14

B. HARMONIZING STATE AND NATIONAL MEASUREMENTS AND STANDARDS AND REDUCING REGULATORY BURDENS 15
C. ENFORCEMENT 21
D. SCOPE 23

IV. PERFORMANCE MEASUREMENTS AND STANDARDS 25

A. GENERAL ISSUES 25
B. MEASUREMENTS AND STANDARDS 35
1. Pre-Order Measurement 35
2. Order Status Measurements 37
3. Provisioning Measurements 46
4. Maintenance and Repair Measurements 65

V. IMPLEMENTATION, REPORTING PROCEDURES, PERFORMANCE EVALUATION AND STATISTICAL ISSUES 73

A. IMPLEMENTATION 73
1. Data Validation and Audits 73
2. Workshops 75
3. Periodic Review of the Measurements and Sunset Provisions 77
B. REPORTING PROCEDURES 80
C. PERFORMANCE EVALUATION AND STATISTICAL ISSUES 89

VI. PROCEDURAL MATTERS 92

A. EX PARTE PRESENTATIONS 92
B. COMMENT FILING PROCEDURES 93
C. INITIAL PAPERWORK REDUCTION ACT ANALYSIS 97
D. INITIAL REGULATORY FLEXIBILITY ANALYSIS 98

VII. ORDERING CLAUSES 106

APPENDIX: NATIONAL PERFORMANCE MEASUREMENTS

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (Notice) we seek comment on whether the Commission should adopt a select group of measurements and standards for evaluating incumbent local exchange carrier (incumbent LEC) performance in the provisioning of facilities that are used by their carrier-customers to compete for end-user customers.[1] In particular, we

[1] While most of our questions in this Notice seek comment on the applicability of national measurements and standards to incumbent LECs, due to their historical control over essential "bottleneck" facilities, we expressly seek comment in Section III.D, *infra*, on the applicability of any or all of these measurements and standards to other wholesale carriers.

offer for comment performance measurements and standards[2] that could apply to the key aspects of pre-ordering, ordering, provisioning, and maintaining those facilities and services that are critically important to ensuring that competitive LECs can enter the market for local exchange services as contemplated by the Telecommunications Act of 1996.[3] We therefore seek comment on measurements and standards for collocation, loop, transport, and interconnection trunk facilities. We also solicit comment on enforcement policies and guidelines should the Commission promulgate national measurements and standards.

2. The Act is premised on the notion that federal and state regulators can and should promote competition by requiring incumbent LECs to provide inputs to other LECs so that the latter may compete with the incumbent for customers. These inputs are set forth in section 251(c) which, *inter alia*, requires incumbents to provide interconnection, collocation, and access to unbundled network elements (UNEs) in a manner that is just, reasonable and nondiscriminatory.[4] The Commission and state public utility commissions have sought to interpret and implement these statutory obligations in a vast number of rulemakings, adjudications, arbitrations and investigations. Moreover, these obligations are incorporated by reference in section 271 of the Act,[5] and thus the Commission has examined these obligations in the context of determining whether Bell Operating Companies (BOCs) should be authorized to provide interLATA service.

3. Implementation of the Act in these numerous proceedings has yielded benefits to the public in the form of increasing local competition.[6] The sheer variety and number of regulatory requirements, however, has also led to concern about how or whether these rules should operate together at present and in the future. Indeed, at the federal level alone, the

---

[2] In this Notice, we use the term "performance measurements" to refer to the data regarding an incumbent carrier's performance, such as the period of time it takes to order and provision an unbundled loop. Likewise, we use the term "reporting requirements" to refer to the incumbent LEC's obligation to collect performance measurements and provide the results of those measurements to other parties. We use the term "performance standards" to refer to specific performance goals or benchmarks, such as a requirement that an incumbent LEC complete an order for an unbundled loop within a specified period of time. As discussed below, our use of the term performance standards also incorporates the concept of "business rules," which are the detailed specifications of the way data are to be collected, measured and reported.

[3] The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). We refer to the Communications Act of 1934, as amended by the Telecommunications Act of 1996, as the Communications Act or Act.

[4] 47 U.S.C. § 251.

[5] *See* 47 U.S.C. § 271(c)(2)(B).

[6] The Commission's most recent data show that end user lines served by competitive carriers grew 97 percent in 2000, and that, by the end of 2000, competitive carriers served over 16,000,000 telephone service lines, or approximately 8.5 percent of the total lines in the country. In a few states, competitors serve as many as 15 to 20 percent of the access lines reported. Trends in Telephone Service Report, Federal Communications Commission, Industry Analysis Division, Common Carrier Bureau, at 9-1, 9-5, 9-6 (August 2001).

Commission's obligations to implement and enforce the Act have relied largely on general, prophylactic regulations, case-by-case adjudication, and, in the context of section 271 proceedings, analysis of performance standards on a state-by-state basis. This regulatory patchwork fails to provide industry with consistent and "bright line" guidance as to whether an incumbent LEC has provided just, reasonable and nondiscriminatory service in any given situation. This makes it harder for the industry to comply with the Act and more costly to both the industry and the Commission to enforce it. Moreover, regulating in such a piecemeal fashion does not necessarily result in requirements that focus on the most important aspects of market access, or develop those requirements quickly enough to keep pace with the rapidly developing market for telecommunications services. Accordingly, we initiate this proceeding not for purposes of developing national performance measures as a new set of substantial and burdensome requirements imposed on carriers. Rather, the Commission solicits comment in this proceeding because it believes national performance measures could rationalize potentially divergent federal requirements in an efficient way, thus serving a deregulatory purpose while nevertheless advancing the procompetitive scheme of the Act.

4. The item serves the same purpose with regard to state requirements. The growth in competition since the passage of the Act is due in part to the thoughtful development and dedicated enforcement of these requirements by the states, and the Commission has found analysis of state performance requirements to be an important part of its consideration of BOC section 271 applications. The absence of a clear set of federal standards, however, makes it harder to detect and resolve inconsistent federal and state approaches to compliance with the Act, and the proliferation of differing state requirements may impose increasingly divergent and costly requirements on carriers. This Notice thus solicits comments as to how the Commission might best work with the states in developing and applying national performance measurements, and how the Commission and states can coordinate enforcement so as to advance the mutual interest of the federal and state governments in implementing the Act. It also solicits comments as to whether national performance measures might reasonably be expected to result in greater consistency of certain state standards over time. Thus, this item can be seen as furthering a deregulatory yet procompetitive goal in three different dimensions over time: among federal requirements, between federal and state requirements, and potentially among state requirements.

5. The discussion in this Notice focuses on access to those facilities fundamental to competitors, particularly as they pertain to new facilities-based entrants.[7] As the Commission stated in the *UNE Remand Order*, facilities-based competition, of the three methods of entry mandated by the Act, is most likely to bring consumers the benefits of competition in the long run by providing incentives for both incumbents and competitors to invest and innovate, and will

[7] We note that this goal is consistent with the method of evaluating performance used by the Commission within the context of its review of section 271 applications. Specifically, in recent section 271 orders, the Commission has focused on a core set of performance indicators in its evaluation of BOC applications for authorization to provide in-region interLATA services.

permit both the Commission and the states to reduce regulation.[8] We therefore seek comment on whether the establishment of national measurements and standards to assess incumbent LEC performance will further a Commission goal of fostering facilities-based competition while promoting simultaneously competition, innovation, and deregulation.

6. Moreover, consistent with our desire that national performance measures rationalize potentially disparate federal and state requirements, we believe it is appropriate and necessary to consider and weigh the additional cost of proposed requirements in light of their reasonably expected benefits. Thus, we seek comment on the use and scope of any performance requirements and, as a threshold matter, on how to balance competitors' concerns about poor provisioning of UNEs, interconnection trunks and collocation[9] with the incumbent LECs' concern about the number and cost of state and federal measurements and standards.[10] Moreover, we seek comment on whether these are problems for which intervention in the form of national measurements and standards is more beneficial than harmful, and expect that the comments we receive in response to this Notice will inform our decision. In addition, we seek comment on how these standards may benefit the industry in general by increasing the uniformity of expectations and creating clear, predictable, and enforceable standards.

7. To assist in the development of a full and complete record on the issues, we offer for comment a set of specific performance measurements, and seek comment on issues relating to potential implementation and reporting requirements. We are aware that any new measurements or standards we may choose to adopt must be carefully designed to balance our objectives of ensuring that incumbent LECs maintain a high level of service quality, and thus meet the nondiscriminatory standard of section 251, and minimizing the burdens imposed on dominant carriers. In addition, we do not intend for our own regulations to interfere unduly with the operation of these markets as competition develops or with corresponding state policies.

---

[8] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, 15 FCC Rcd 3696, at 3701, para. 7 (1999) (*UNE Remand Order*).

[9] *See, e.g., Petition of Association for Local Telecommunications Services for Declaratory Ruling* (*see* Section II.B, *infra* for a discussion of this petition). In addition, the Commission has received payments from several BOCs as a result of various aspects of their performance. *See, e.g.,* SBC Communications, Inc. Notice of Apparent Liability for Forfeiture, File No. EB-00-IH-0432, Notice of Apparent Liability for Forfeiture, DA 00-2858 (rel. Dec. 20, 2000); Verizon Communications, Inc., File No. EB-01-IH-0236 (rel. Sept. 14, 2001).

[10] *See, e.g.,* Verizon's request that the Commission "limit the number of performance measures that incumbent carriers report for federal and state purposes. . . . The Commission should undertake a review of such metrics in order to establish a core set of 10 to 15 wholesale performance measures and eliminate the rest." Verizon Reply to Comments Updating Previously Filed Petitions for Reconsideration, CC Docket No. 96-98, at 4-5 (filed Sept. 10, 2001). *See also,* Edward Whitacre, Chairman of SBC, stating that SBC had to meet "3 million" performance measurements each month and that "[n]o one can make 3 million [measures] a month perfectly. That's what we think is too much regulation." Edie Herman, Whitacre Says Cal. Is Next Target For Sec. 271 Entry, Communications Daily, 2001 WL 5053210, May 17, 2001.

Therefore we also seek comment on the most appropriate periodic review or sunset mechanism should we adopt a set of measurements and standards.

II. BACKGROUND

8. The Commission has considered or has been asked to consider performance measurements in a variety of contexts. With the passage of time since the enactment of the Telecommunications Act of 1996, and because of our greater experience with performance measurements and the realities of the competitive marketplace, we now have a better, more informed understanding on which to initiate this proceeding.[11] Indeed, the measurements and standards about which we seek comment are designed to be more targeted than those proposed in previous proceedings.[12] Our intent is to fold all relevant proceedings relating to measurements and standards for UNEs into the instant proceeding. In this manner, the Commission can best evaluate how performance measurements fit into a more general competition policy framework. We briefly describe the pending proceedings below.

A. OSS Notice

9. On April 17, 1998, the Commission sought comment regarding the adoption of national performance measurements for OSS functions, interconnection, and access to operator services and directory assistance.[13] Like the present Notice, the OSS Notice recognized that there is an inherent tension in the relationship between incumbent LECs and requesting carriers.[14] To promote the goal of efficient and effective communication between competing carriers and incumbent LECs, while also reducing the need for regulatory oversight, the Commission proposed a methodology for analyzing whether requesting carriers were able to access support functions of incumbent LECs in a nondiscriminatory and just and reasonable manner.[15] Then, as now, such performance measurements were intended to assist incumbents, new entrants, and

---

[11] *See Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, Notice of Proposed Rulemaking, CC Docket No. 98-56, 13 FCC Rcd 12820, at 12821-22, para. 4 (1998) (OSS Notice) (stating that the experience the Commission gained from its development of model performance measures and reporting requirements will provide it with a more informed and comprehensive record upon which to decide whether to adopt national, legally binding rules). *See also,* Letter from Kimberly Scardino, WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, at 2 (filed Oct. 1, 2001) (*WorldCom Oct. 1 Ex Parte*) (noting that since the release of the OSS Notice, "there have been at least five section 271 filings where the BOC's wholesale performance was focus of the application").

[12] *See, e.g.,* OSS Notice, 13 FCC Rcd at 12837-62, paras. 43-103 (seeking comment on over 30 proposed measurements).

[13] *Id.*, 13 FCC Rcd at 12827, para. 21.

[14] *Id.*, 13 FCC Rcd at 12819, para. 1.

[15] *Id.*, 13 FCC Rcd at 12819, 12824, paras. 3, 14.

regulators in evaluating an incumbent's performance in meeting its statutory obligations.[16] Recognizing that the record in the OSS Notice has been rendered stale due to the passage of time, we terminate that proceeding and urge interested parties that had filed comments in that proceeding to participate in the instant proceeding.[17]

B. ALTS Petition

10. On May 17, 2000, the Association for Local Telecommunications Services (ALTS) petitioned the Commission to take numerous steps relating to timely and nondiscriminatory provisioning of high capacity loops and loops capable of supporting digital subscriber line (xDSL) service.[18] ALTS contends that the Commission should establish, among other things, certain and quantifiable remedies, including self-executing monetary penalties, for noncompliance with provisioning rules.[19]

11. In this proceeding we will consider a number of ALTS's requests. Specifically we seek comment on ALTS's requests that we ensure that DS1- and DS3-level loops are provided to requesting carriers on a nondiscriminatory basis; that we adopt maximum intervals for the provisioning of UNE loops; and that we consider federal penalties for failure to comply with these rules.[20] Therefore, we incorporate by reference the portions of the record generated by the ALTS Petition that are responsive to the three issues listed above.[21]

---

[16] *Id.*, 13 FCC Rcd at 12819, para. 3.

[17] For purposes of administrative ease, in response to the Commission's request for comments on the measurements and standards, *infra*, commenters may reference particular filings made in CC Docket No. 98-56 that they believe are responsive to our questions.

[18] *Petition of Association for Local Telecommunications Services for Declaratory Ruling: Broadband Loop Provisioning, 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; *Application 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-48 DA 00-891, May 17, 2000 (ALTS Petition); *Pleading Cycle Established for Comments on ALTS Petition for Declaratory Ruling: Loop Provisioning*, CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48, DA 00-114, 15 FCC Rcd 18671 (2000).

[19] ALTS Petition 31-2.

[20] *Id.* at 32.

[21] We determine that ALTS's remaining requests have been, are being or will be addressed in other proceedings: require incumbents to provide entire loops to competitors providing integrated voice and data services over shared lines; require incumbents to provide access to subloops wherever possible in a manner that will support provision of multiple services over a shared line; hold that incumbents must provision special access circuits within the same interval in which they provision these circuits for their own retail services; establish a deadline by which all incumbent OSS interfaces must electronically provide all loop information to which the incumbent has access; and (continued....)

C. Collocation Reconsideration Order

12. In the *Collocation Reconsideration Order*, the Commission established a default interval of 90 calendar days, after receipt of an acceptable collocation application, by which an incumbent LEC must complete any technically feasible physical collocation arrangement.[22] This default standard applies in the absence of state standards or alternative standards agreed to by the requesting carrier and the incumbent LEC.[23] Several carriers filed petitions for reconsideration and clarification of this ruling.[24] In the *Collocation Reconsideration Order*, the Commission noted that timely provisioning of collocation space is essential to telecommunications carriers' ability to compete effectively in the markets for advanced and other telecommunications services, and that absent national standards (and, as noted above, in the absence of state standards or alternative standards agreed to by incumbent and competitive LECs), incumbent LECs in many states will continue to delay unreasonably competitive LECs' build-out of their facilities.[25] The Commission also sought comment on whether it should specify an overall maximum collocation provisioning interval shorter than 90 calendar days or shorter intervals for particular types of collocation arrangements.[26]

13. To the extent not already addressed by commenters in CC Docket Nos. 98-147 and 96-98, we seek further comment on the issues set forth in the reconsideration and clarification petitions, limited to the 90-day period and whether and how this interval should be modified, and urge parties that participated in that earlier proceeding to file comments in this proceeding.[27] We incorporate by reference that part of the record, created in the dockets mentioned above, that is responsive to this one provisioning interval.

(Continued from previous page)
require that all loop de-conditioning charges and other recurring and non-recurring charges adhere to total element, long-run incremental cost principles. *Id.*

[22] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 15 FCC Rcd 17806, at 17821-23, paras. 27-9 (2000) (*Collocation Reconsideration Order*), *petitions for further recon. pending.*

[23] *Id.*, 15 FCC Rcd at 17818-19, para. 22.

[24] *See* Petition of Qwest Corporation for Clarification or, in the Alternative, Reconsideration, CC Docket Nos. 98-147, 96-98 (filed Oct. 10, 2000); *see also* Petition of SBC Communications Inc. for Reconsideration, CC Docket Nos. 98-147, 96-98 (filed Oct. 10, 2000); Verizon Petition for Reconsideration, CC Docket Nos. 98-147, 96-98 (filed Oct. 10, 2000).

[25] *See Collocation Reconsideration Order*, 15 FCC Rcd at 17816-17, 17818-19, paras. 17, 22.

[26] *Id.*, 15 FCC at 17855, paras. 114-15.

[27] Again, for purposes of administrative ease, parties that have already filed comments responsive to these issues, may update their earlier filings or simply may reference previously filed comments that remain relevant.

III. LEGAL AUTHORITY, ENFORCEMENT AND SCOPE

A. Federal Authority

14. Although we seek comment on whether to adopt national performance measurements and standards, the Commission's authority to do so is clear. Under section 201(b), the Commission has general rulemaking authority to carry out the provisions of the Act, including sections 251 and 252, added by the Telecommunications Act of 1996.[28] Section 251 of the Act imposes on all incumbent LECs the duty to provide to requesting telecommunications carriers interconnection, access to UNEs, and collocation, at "rates, terms and conditions that are just, reasonable, and nondiscriminatory."[29] National performance measurements and standards may be used to help determine whether incumbent LECs are in compliance with these duties and other requirements under the Act.

B. Harmonizing State and National Measurements and Standards and Reducing Regulatory Burdens

15. We recognize that many state commissions have already adopted an extensive set of performance measurements, standards, and penalty plans to capture incumbent LECs' performance in provisioning UNEs, interconnection trunks and collocation. For example, and as mentioned above in the context of section 271 proceedings, many states have developed measurements and standards to evaluate the extent to which the BOCs have opened their local markets to competition.[30] These state efforts have been instrumental in evaluating and documenting incumbent LEC performance for purposes of assessing compliance with section 271's competitive checklist. Accordingly, we seek comment on how best to build on the states' pioneering efforts in developing national performance measures and standards.

16. As we have stated, one of our primary goals in considering whether we should impose national performance measurements and standards is whether such requirements can serve to rationalize the multiple regulatory requirements, and thereby not increase incumbent carriers' regulatory burdens. Accordingly, we ask commenters to address specifically how any national measurements and standards offered for comment in this Notice could serve to minimize inconsistency or redundancy of state and federal requirements in the following three respects.

---

[28] 47 U.S.C. § 201(b); *AT&T v. Iowa Util. Bd.*, 525 U.S. 366, 378 (1999).

[29] 47 U.S.C. § 251(c)(2), (c)(3), (c)(6).

[30] *See, e.g., Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas*, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000) (*SWBT Texas Order*); *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*, Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999) (*Bell Atlantic New York Order*).

17. First, we seek comment on whether and how state performance requirements could be harmonized and potentially streamlined through adoption of national measurements and standards. Indeed, we are concerned that one state's specific performance measurements and standards can duplicate, conflict with, or overlap with the measurements and standards adopted in another state, for the same incumbent LEC. We note that if the Commission establishes national performance measures and standards, the jurisdictional differences among the core measures and standards could fall away over time. For example, states that have not already developed such requirements could adopt requirements that closely track or at least are consistent with the national requirements. Similarly, states that have already adopted performance measures and standards could, as they periodically review or reconsider those requirements, gradually modify those requirements to make them more consistent with the national requirements. Such a convergence of measurements and standards for key processes could eventually reduce or eliminate duplicative measurements within a BOC's territory and, if states are so inclined, might permit states to expend fewer resources developing and monitoring their own set of measurements for critical areas. Should this harmonization not occur, however, adoption of national measurements and standards could merely increase the overall reporting burden on incumbent LECs. Thus, we seek comment on the possibility or probability of national performance measurements and standards reducing an incumbent's reporting requirements.

18. Second, we seek comment on whether and how state and federal performance requirements could be harmonized and potentially streamlined through adoption of national measurements and standards. In this regard, we note initially that the bulk of the performance requirements we propose here have their origins in whole or in part in state proceedings, such that states with existing requirements may in some cases find their rules to be the same as ours. And yet, there may be state performance requirements that would, in fact, differ from any national requirements adopted by the Commission. We seek comment on the likelihood or pervasiveness of such differences. We request comment on whether any measurements that we may adopt should apply only in the absence of corresponding state measurements and whether such a "default" approach would reduce overall regulatory burdens on incumbent LECs. The Commission has had experience in adopting default national standards with respect to collocation provisioning and we seek comment on whether it is appropriate to extend such a framework to the UNEs and interconnection trunks discussed below, or to other facilities.[31] Conversely, we seek comment on whether we should adopt national performance measurements and standards that would supplant, or apply in place of, corresponding state measurements and standards where the state requirements differ. If so, we also request comment on whether national performance measurements and standards should apply in place of state standards immediately, later upon sunset of state requirements, or be phased in gradually. Finally, we seek comment, in particular, on whether it is consistent with the deregulatory emphasis of the Act to have separate sets of federal and state performance measurements and standards.

[31] *See, e.g., Collocation Reconsideration Order*, 15 FCC Rcd at 17819, 17826-27, paras. 23, 37.

19. Third, we seek comment on whether and how federal performance requirements[32] could be harmonized and potentially streamlined through adoption of national measurements and standards, and could facilitate the Commission's review of compliance with the Act. To this end, we seek comment on whether national measurements and standards should establish compliance with the Act's requirements standing alone or should be merely one factor in our review. We note that our section 271 orders have evaluated and focused on select performance measures adopted by the states. To the extent that some set of national performance measures were adopted by states, and were made consistent region-wide for incumbent LECs, they would serve to harmonize and streamline federal section 271 review and post-entry compliance. We seek comment on what weight, if any, the Commission should generally give to these measures and standards in evaluating future section 271 applications.[33] We seek comment in particular on whether national performance measurements and standards applied in the section 271 review context would serve to reduce carriers' overall regulatory burdens. Commenters are also encouraged to identify other situations in which the Commission has applied or adopted performance measures or standards. Furthermore, we seek comment on what relationship should these other measures and standards have to the requirements adopted in this proceeding in light of the Commission's goals of promoting performance that satisfies that statutory requirements while not ultimately increasing carriers' overall regulatory burdens.

20. In addition, we solicit comment on whether we should establish a joint federal-state task force that could, among other things, develop and implement directives that may result from this proceeding. We likewise seek comment on how the Commission can best work with states on collecting, evaluating, and enforcing performance measurements and standards in a manner that reduces overall regulatory burdens on carriers. For example, commenters are asked to address whether the Commission should exclusively enforce national performance standards, develop mechanisms with the states for coordinated enforcement, or instead, serve a coordinative role in order to advance harmonization of state standards in line with national performance standards and in a manner that decreases incumbent carriers' overall regulatory burdens.

---

[32] For example, as a condition for Commission approval of several merger requests, some BOCs provide the Commission with performance reports. *See, e.g., 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 and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, 14 FCC Rcd 14712, 15040, Appendix C (1999) (*SBC/Ameritech Merger Order*); *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032, 14334, Appendix D (2000) (*Bell Atlantic-GTE Merger Order*).

[33] In seeking comment on a possible role for national performance measurements in future section 271 proceedings, we by no means suggest that the testing and metric-development processes currently being undertaken by state commissions and multistate groups are inadequate in any respect. To the contrary, we applaud those efforts, and our issuance of this Notice should not be taken as a signal to slow down or otherwise scale back ongoing state workshops intended to measure compliance with the checklist items in section 271(c)(2)(B).

C. Enforcement

21. We seek comment as to whether and to what extent the Commission should exercise the full panoply of enforcement mechanisms available to it under the Act to enforce any national measurements and standards we might adopt. For example, the Commission could impose monetary forfeitures pursuant to section 503(b) of the Act for failure to comply with the measurements and standards.[34] In the event that review of a carrier's reported performance demonstrates a violation of section 271, the Commission could conclude that the requirements of section 271 are not satisfied and thus decline to approve the section 271 application. The Commission also could take enforcement action pursuant to its authority in section 271(d)(6). Moreover, private parties could file formal complaints seeking damages under section 208 for failure to comply with the standards or measurements or section 271 of the Act. We seek comment on the extent to which compliance with these measurements and standards should be taken into account in determining whether enforcement action is appropriate for potential violations of our other local competition rules, section 251, or section 271.

22. We seek comment on whether the Commission should establish specific enforcement policies or guidelines for responding to violations of any national measurements and standards that we might adopt. For instance, commenters are requested to address whether we should establish base forfeiture amounts for violations of any rules adopted in this proceeding, and if so, what the appropriate amounts should be. Given the importance of compliance with these rules in encouraging competition and avoiding scenarios where forfeitures are merely a cost of doing business,[35] we seek comment on whether the base forfeiture amount should be the statutory maximum.[36] We also seek comment on the lawfulness and feasibility of adopting a self-effectuating liquidated damages rule similar to those that have been adopted by some states, where failure to comply with the standards would result in automatic payments to competitors.[37] In this regard, we ask for comment on how such a system would work, *e.g.*, what would trigger the payments, who would be eligible for such payments, and what would be the amount of the

---

[34] 47 U.S.C. § 503(b).

[35] The Commission has made clear that certain companies, such as the incumbent LECs, should expect higher forfeitures such that the amounts are not considered merely an affordable cost of doing business. *See The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, at 17100, para. 27 (1997), *recon. denied*, 15 FCC Rcd 303 (1999). In 2000, SBC had operating revenues of $51.4 billion, with an operating income of $10.7 billion. SBC Telecommunications, Inc., 2000 Annual Report at 4 (2001).

[36] Section 503(b)(2)(B) authorizes the Commission to assess a forfeiture of up to $120,000 for each violation, or each day of a continuing violation, up to a statutory minimum of $1,200,000 for a single act or failure to act. 47 U.S.C. § 503(b)(2)(B).

[37] The Commission has experience of its own overseeing self-executing performance assurance plans. *See, e.g., Bell Atlantic-GTE Merger Order*, 15 FCC Rcd 14032, 14334, Appendix D, Attachment A, paras. 8-16 (establishing a voluntary payment scheme under the Bell Atlantic-GTE merger conditions); *SBC/GTE Merger Order*, 14 FCC Rcd at 15042-46, Appendix C, Attachment A, paras. 8-16.

payments.[38] We also seek comment on whether the Commission should adopt a standard creating a presumption of competitive harm in violation of section 271, or make a determination of competitive harm on a case-by-case basis, if the incumbent LEC's performance falls below a certain level for a particular measurement or standard.

D. Scope

23. As discussed above, we seek comment on whether national measurements, standards, and reporting requirements for UNEs, interconnection trunks, and collocation should apply to all incumbent LECs. Specifically, we seek comment on whether, as a category, all incumbent LECs should be subject to any measurements and standards that we may decide to adopt or should such regulations only apply to some subset of incumbent LECs, or to other types of providers.[39] We also request comment on whether the category of carriers subject to national measurements and standards should vary by type of facilities, *i.e.*, whether certain carriers, but not others, should be subject to measurements for provisioning of UNEs, interconnection trunks, and collocation. Commenters that address these issues should include the legal analyses supporting their positions.

24. We also seek comment on whether any burden resulting from performance measurements, standards and reporting requirements that the Commission may adopt is justified for all carriers, regardless of any particular carrier's size. For example, we recognize that the reporting obligations may require incumbent LECs to modify existing computer systems to collect the necessary data. We also recognize that there may be a certain level of expense involved in generating performance measurements and statistical analyses, if applicable. We request commenters to address whether any requirement that we may establish would impose particular costs or burdens on small, rural, or midsized incumbent LECs. We seek comment on how the rules should be modified to take into account any particular concerns of these incumbent LECs. For example, we ask for comments on how measurements could be tailored to account for the unique characteristics of the areas in which small, rural or midsized LECs are located.

IV. PERFORMANCE MEASUREMENTS AND STANDARDS

A. General Issues

25. In this section, we discuss a core set of performance measurements for four basic functions obtained from the incumbent LEC: pre-ordering, ordering, provisioning, and ongoing maintenance and repair services. Nondiscriminatory access to these basic functions generally requires efficient and effective processes between the retail service provider (*i.e.*, the competitor) and the wholesale provider (*i.e.*, the incumbent carrier). In the context of this Notice, efficient

[38] *See* ALTS Petition at 31-2.

[39] *See, e.g.*, Letter from Dee May, Verizon, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, at 2 (filed Oct. 16, 2001) (*Verizon Ex Parte*) (stating that national reporting requirements should be extended to all local telecommunications providers, including competitive LECs).

and effective processes mean that for the elements and services it obtains from the incumbent, the competing carrier should be able to: gather and verify the information necessary to place an order, place an order with the incumbent, obtain accurate and timely notice of the progress of that order to completion, obtain timely and quality provisioning of that order, and receive prompt repair and maintenance in the event that a problem exists. As noted above, the purpose of this Notice is to solicit comment as to whether the establishment of a select group of performance measurements can promote the goal of efficient and effective processes between competing carriers and incumbent LECs without increasing overall regulatory burdens on carriers.

26. Uniform, national performance measurements may make much more transparent the extent to which an incumbent LEC is providing nondiscriminatory access. They may do so by permitting direct comparisons between the incumbent's performance in serving its own retail customers and its performance in providing service to competing carriers, and by allowing the Commission and competitive LECs to compare the performance of different incumbents. Moreover, national standards in this area may produce better overall performance by incumbents as the threat of sanctions for poor performance provides incentives to comply with the market-opening provisions of the Act. At the same time, we recognize that another of the Act's primary goals is to eliminate or avoid unnecessary, duplicative, or otherwise burdensome regulation. Thus we acknowledge that the potential benefits of national standards may be outweighed by the likely burdens imposed on carriers and federal and state regulators. We seek comment on this balance between benefits and burdens as it applies to all aspects of this Notice.

27. Below, we set forth for comment one indicator of pre-ordering performance, three indicators of ordering performance, five indicators of provisioning performance, and three indicators of maintenance and repair performance. We seek to gauge an incumbent LEC's ability to permit a competitor to place an order, process that competitor's order, install and maintain a competitor's loops, transport, and interconnection trunks as well as provide collocation in terms of timeliness, quality, and accuracy. We recognize that there are hundreds of measurements that have been proposed and implemented in various state proceedings[40] as well as proposed to the Commission.[41] The list is intended to cover activities that could be relatively easily measured

[40] A number of state commissions have developed, in conjunction with the incumbent and competitive carriers, a set of comprehensive measures for reporting of performance in various areas. *See, e.g., Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Order Adopting Revisions to Inter-Carrier Service Quality Guidelines, NYPSC Case 97-C-0139 (December 15, 2000); *New York State Carrier-to-Carrier Guidelines Performance Standards and Reports*, NYPSC Case 97-C-0139 (Jan. 2001); *Texas Performance Remedy Plan and Performance Measurement, Attachment 17 to Texas 271 Agreement (Version 2.0)* (Aug. 2001).

[41] *See, e.g.*, Letter from Robert Blau, BellSouth, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, at 2 (filed Nov. 2, 2001) (*BellSouth Ex Parte*); *Verizon Ex Parte; WorldCom Oct. 1 Ex Parte*; Letter from Jason Oxman, Covad, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, at 3-5 (*Covad Oct. 1 Ex Parte*); Letter from Jason D. Oxman, Covad, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98, at 5-7 (filed Sept. 4, 2001) (*Covad Sept. 4 Ex Parte*); Letter from Lisa B. Smith, WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98 (filed Aug. 6, 2001) (*WorldCom Aug. 6 Ex Parte*); Letter from (continued....)

and that appear to be particularly critical to carriers' ability to compete effectively but that would not increase overall regulatory burdens on carriers. This list is based not only on our analysis of state- and carrier- proposed performance frameworks, but also on our ongoing experience in evaluating incumbents' performance as reported in their applications to provide in-region, interLATA service under section 271 of the Act.[42] At the same time, the performance measures we offer for comment are not intended to suggest what the results will be of the Commission's triennial review of existing UNEs. Without prejudging the various measurements and standards that have been proposed, we note that the measurements set forth for comment in this Notice seek to gauge, in a minimally burdensome way, an incumbent LEC's overall performance in its role as a wholesale provider of both facilities and services, as contemplated by the Act. In assessing the potential benefits of the measures proposed here, or others suggested by comments, parties should consider whether the discrete number of measures identified here might encourage the incumbent to center discriminatory activities on other non-measured performance dimensions.

28. With regard to additional measurements, we ask parties to consider whether there are any billing measurements that are equally or more critical to promoting competition than the measures we set forth for comment today and that could be imposed without increasing overall regulatory burdens on carriers.[43] We also request that parties comment on whether we should adopt measures to address combinations of UNEs, or any other services not expressly addressed herein. We encourage commenters to address whether any state approach to defining provisioning measures and standards for UNEs, interconnection trunks, and collocation might provide useful guidelines. We welcome, and indeed encourage, input from the states on all of these issues. We recognize that state commissions have the most meaningful and detailed experience in establishing measurements and standards and, thus, their comments on the proposals contained in this Notice will be invaluable. Finally, as discussed in greater detail below, we ask commenters to consider the extent to which the Commission should incorporate periodic reviews of measures and standards to ensure that the critical measures for efficient

(Continued from previous page)
A. Renée Callahan, Time Warner Telecom, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98 (filed July 16, 2001) (*Time Warner Ex Parte*); ALTS Petition at 16-28.

[42] Further, as noted earlier in this Notice, we have previously proposed a model set of reporting requirements that states could adopt to measure whether an incumbent LEC is providing interconnection, resale, and UNEs on a nondiscriminatory basis. OSS Notice, 13 FCC Rcd at 12837-62, paras. 43-103 (proposing measurements for pre-ordering, ordering and provisioning, repair and maintenance, billing, interconnection, and other general measurements).

[43] *See, e.g., WorldCom Oct. 1 Ex Parte*, Attachment 2 (UNE Measurements and Performance Standards), at 28-30; *Covad Oct. 1 Ex Parte* at 5; *Verizon Ex Parte* at 4. In addition, the New York Public Service Commission recently adopted two new billing metrics for dispute-acknowledgment timeliness and dispute-resolution timeliness, which are designed to measure the timeliness with which Verizon acknowledges and resolves competitive LEC billing adjustment claims. *See Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Order Modifying Existing and Establishing Additional Inter-Carrier Service Quality Guidelines, NYPSC Case 97-C-0139, Attachment 1, Section J (October 29, 2001).

wholesale provisioning remain relevant and to ensure that only the most essential measurements are retained.

29. In the section that follows, we set forth measurements for comment and explain the basis for their inclusion. For each measurement, we seek comment, as a general matter, on the need for the measurement, the appropriate way to define the measurement, the level of detail that should be contained in the measurement, and the impact on carriers' regulatory burden. Additionally, we request comment on whether the incumbent LECs' OSS allow them to report each measurement contained in this Notice. In evaluating the measurements set forth for comment, we request that parties refer to the Appendix, which sets forth a model or template that commenters are requested to follow. As indicated in the Appendix, and as developed in this section, we seek comment on several aspects of the measurements. The Commission requires a certain amount of information necessary for our review and this template is designed to elicit that information. Commenters may, of course, describe any additional information they deem relevant or instructive.

30. We seek comment on the exact definition and list of exclusions or exceptions that should apply to each measurement, and request that parties provide detailed responses regarding why particular exclusions should apply.[44] For example, in evaluating the quality of new installations, parties might conclude that trouble tickets cancelled at the competitive carriers' request or trouble tickets associated with administrative service should not be included. We ask that parties list all such exceptions or exclusions in their comments. We also request that parties identify those exclusions that are particularly vulnerable to multiple interpretations and request that parties propose well-defined methods for addressing such situations. For example, as noted in more detail below, we seek comment on the best way to address Customer Not Ready (CNR) or No Access (NA) situations.[45] We also seek comment on exclusions such as disposition codes and ask parties to comment on whether it is necessary to further define disposition codes for trouble reporting, such as "Found OK" and "Test OK" and Customer Premise Equipment (CPE),[46] to detect possible discrimination.

---

[44] *See, e.g., Verizon Ex Parte* at 2 (supporting the goal of establishing a common set of definitions to be used nationally, recognizing that there may be instances where differences in processes make differences in definitions inevitable). We seek comment on this suggested goal and caveat.

[45] CNR situations apply when, for example, a competitive LEC is not ready to receive an interconnection trunk from the incumbent LEC when the incumbent is ready to deliver the circuit. *See also, WorldCom Oct. 1 Ex Parte*, Attachment 2 at 4 (defining CNR as a "verifiable situation beyond the normal control of the ILEC that prevents the ILEC from completing an order, including the following: CLEC is not ready; end user is not ready; connecting company, or third party supplier, is not ready"). NA situations occur when a technician attempts to install a particular service but is unable to obtain access to the premises.

[46] "Found OK" and "Test OK" refer generally to the situation when a technician is dispatched to investigate and correct a trouble but finds no problem with the particular facility (*e.g.*, a loop). A CPE code would apply generally to situations in which a technician determines that the source of the trouble on a particular facility is a result of equipment (*e.g.*, a modem) improperly installed by the end user.

31. We also seek comment on all applicable business rules for each measurement, which identify and define the terms of each performance measurement. For example, the business rules for a trouble report rate measurement might include defining a trouble report, explaining how a trouble is resolved, and defining how multiple troubles on a specific loop or circuit are addressed. The Commission recognizes the extent to which business rules play a fundamental role in unmasking potential discrimination and ensuring that the data underlying the performance measurement are accurate and meaningful. As stated above, it is our intent to adopt not only measures but also standards or business rules associated with those measures. For example, we seek comment on whether each circuit should be counted as a separate order, even if multiple circuits are ordered at the same time, and even if the incumbent LEC breaks the service request into separate internal orders. In the case of a supplemental service request, we seek comment on whether the measures would be based on the last request sent and the associated due date received by the incumbent LEC. We also seek comment on such issues as whether to define the incumbent LEC completion date as the date incumbent LEC completion notification is provided to the competing carrier. Other business rules might address, for example, whether projects[47] should be included in each measure and whether the exclusion of projects would result in only a small percentage of all activity being subject to measurement. We seek comment on these and any other business rules parties find appropriate for each measurement.

32. We also request, as indicated by the Appendix, that parties identify the appropriate levels of disaggregation for each measurement as well as the appropriate reporting and geographic dimensions.[48] Moreover, we seek comments regarding the best way to calculate each relevant measurement (*e.g.*, whether it is more appropriate to employ average days or percentages and what are the strengths and weaknesses of both types of calculation). We also seek comment on the parity performance standard or, if appropriate, proper benchmark for each measurement.[49] We ask that parties provide as much detail as possible regarding each aspect of the measurement, including an explanation as to why particular business rules, exclusions, calculations or benchmarks are appropriate. Additionally, we request comment on whether an exceptions process should be established to permit an incumbent LEC to explain or restate reported results to account for circumstances beyond its control.[50]

---

[47] *See e.g., WorldCom August 6 Ex Parte*, Attachment 2 at 16 (defining projects as "[s]ervice requests that exceed the line size and/or level of complexity, which would allow for the use of standard ordering and provisioning processes").

[48] This Notice seeks further comment on the appropriate levels of disaggregation, reporting structure and geographical dimensions at Section V.B, *infra*.

[49] *See, e.g., Verizon Ex Parte* at 2 (stating that the only appropriate standard is a comparison of a relevant retail measure but that when a retail analogue does not exist, it will support the establishment of state-specific benchmark standards that account for variations in market evolution and maturity).

[50] *See id.*

33. We seek comment on whether these measurements and standards should apply to certain types of facilities, *i.e.*, all unbundled local loops, including xDSL-capable loops, collocation, interconnection trunks, and transport. While the Commission seeks comment on the development of a core set of performance measurements and standards, we recognize that before adopting any measurement or standard, we must first take into account the applicability of those measurements and standards to various carriers, interfaces, and facilities. We acknowledge that this may result in a certain level of disaggregation that may, effectively, multiply the number of measurements reported. Accordingly, in this Notice we seek comment on measurements that are vital to competition and our enforcement efforts. Although our focus is limited to performance measurements that we believe may provide the clearest indication of an incumbent LEC's provisioning practices, we seek comment on whether there is a need to report on any additional facilities or provisioning practices. We also seek comment on the level of disaggregation of products[51] necessary to reveal discrimination and ask whether and how measurements may be streamlined while maintaining their effectiveness.

34. We emphasize that, with respect to all issues herein, commenters should address carefully and specifically *why* their recommended outcomes do not increase carriers' overall regulatory burdens. We also seek comment on what mechanisms or procedures the Commission should adopt to ensure that the national performance standards that are adopted, if any, are not revised or expanded in a manner that would undermine the balance between benefits and burdens that the Commission could seek to strike initially.[52]

B. Measurements and Standards

1. Pre-Order Measurement

35. We offer for comment a performance measurement that may permit us to determine whether an incumbent LEC provides requesting carriers with nondiscriminatory access to pre-ordering functionality. Pre-ordering transactions often represent the end user's first contact with a competing carrier. Therefore, an interface that provides responses in a prompt timeframe is necessary for competing carriers to market their services and serve their customers as efficiently and at the same level of quality as the incumbent LEC serves its own customers.[53]

36. We seek comment on whether we should require incumbent LECs to measure whether their pre-ordering systems provide reasonably prompt response times in a manner that

---

[51] *See, e.g., WorldCom Oct. 1 Ex Parte*, Attachment 2 at 2 (listing levels of disagreggation such as: 2-Wire Digital Loop, 2-wire xDSL Loop, DSO, DS1, DS3 and above, 4-wire Digital Loop, and 4-wire xDSL).

[52] *See* Section V.A.3, *infra.*

[53] *See, e.g., Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services, Inc. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Memorandum Opinion and Order, FCC 01-269, at Appendix C, para. 33 (*Verizon Pennsylvania Order*), citing *Bell Atlantic New York Order*, 15 FCC Rcd at 4025, para. 145.

affords competitors a meaningful opportunity to compete (OSS Pre-Order Interface Response Timeliness).[54] Specifically, we request comment on how this measurement should be calculated[55] and what the appropriate exclusions are (*e.g.*, weekends, holidays, hours outside of the normal reporting period). Moreover, we seek comment on whether a parity standard should be applied to this measurement and what should be the appropriate penalties for failure to meet that performance standard. Finally, we request comment on whether another measurement may more accurately capture an incumbent LEC's pre-ordering performance.[56]

2. Order Status Measurements

37. We offer for comment three order confirmation measurements[57] that may enable us to evaluate whether UNEs and collocation are being provided in a nondiscriminatory manner. We seek comment on whether these measurements strike a balance between furthering our goal of eliminating discrimination and minimizing burdens imposed on incumbent LECs.[58] The Commission has stated repeatedly that the proper delivery of order confirmation notices is critical to the ordering process, and that data demonstrating that confirmations are provided in a timely manner are essential for assessing whether competitors are allowed a meaningful opportunity to compete.[59] Timely notification of an order's status enables a competing carrier to inform its customer promptly of the progress of an order, or of any rescheduling or order change. By comparing the time it takes a competing carrier to obtain information on the status of its orders to the average time it takes an incumbent LEC to inform its own retail customer service representative of the status of an order, a competing carrier can determine whether it is receiving notification of an order's status in a nondiscriminatory, and just and reasonable manner.

38. As an initial matter, we seek comment on the utility of each of the measurements set forth below. Also, if an incumbent LEC does not currently provide itself with Firm Order Commitments or other notifiers mentioned in this Notice (FOCs), we seek comment on the

---

[54] *Verizon Pennsylvania Order*, at Appendix C, para. 33.

[55] *See, e.g., WorldCom Oct. 1 Ex Parte*, Attachment 2 at 23 (calculating the timeliness of the response interval as "Query Response Received in X seconds/hours - Query Submission Date and Time / Number of Queries Submitted in Reporting Period").

[56] *See, e.g., Verizon Ex Parte* at 3 (recommending OSS Interface Availability - Prime Time); *Verizon Pennsylvania Order*, at Appendix C, para. 35 (requiring incumbent LECs to provide competitors with access to all of the same detailed information about the loop that is available to the incumbents, in the same timeframe).

[57] The three order confirmation measurements are: (1) Order Notifier Timeliness, (2) Order Completion Notifier Timeliness, and (3) Percentage of Jeopardies.

[58] OSS Notice, 13 FCC Rcd at 12838-39, para. 46.

[59] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4035-39, at paras. 163-64 (discussing order confirmation notices); *Application of BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, 13 FCC Rcd 20599, 20680 at para. 120 (1998) (*Second BellSouth Louisiana Order*).

appropriate retail analogue that should be measured. Moreover, we seek comment on whether these three order status measurements are sufficient to determine whether an incumbent LEC is providing order confirmation notices in a nondiscriminatory manner. Further, we seek comment generally on specific ordering confirmation standards, and business rules for each measure. We recognize that the universe of ordering measures is not limited to those that concern confirmation timeliness. Therefore, we seek comment on whether different ordering measures should be considered.[60]

a. Order Notifier Timeliness

39. We seek comment on whether incumbent LECs should measure the amount of time it takes them to send a notice confirming whether an order placed by a competing carrier has been accepted and indicating the date on which the requested service will be provisioned (FOC Timeliness)[61] and the amount of time they require to notify the competing carrier than an order has been rejected (Reject Timeliness).[62] The Commission has explained in previous orders the importance of timely notification of order confirmation. Among other things, competing carriers rely on FOC notices to make commitments to their customers regarding the date for the commencement of service.[63] Moreover, the Commission has noted that the "[t]imely delivery of order rejection notices has a direct impact on a new entrant's ability to service its customers, because new entrants cannot correct errors and resubmit orders until they are notified of their rejection. . . ."[64]

40. We seek comment on whether FOC Timeliness should be measured from the time an incumbent LEC receives a valid order at its OSS interface from the competing carrier to the time the FOC leaves its OSS interface and is transmitted to the competing carrier, and whether

---

[60] In its most recent order granting 271 approval to a BOC, the Commission stated that, for ordering measurements, it looks primarily at the BOC's ability to "return order confirmation notices, order reject notices, order completion notices and jeopardies, and at its order flow-through rate." *See Verizon Pennsylvania Order*, at Appendix C, para. 36.

[61] *See, e.g., BellSouth Ex Parte* at 2; *Time Warner Ex Parte*, Attachment 2 at 5; *WorldCom Aug. 6 Ex Parte*, Attachment 2 at 5; *WorldCom Oct. 1 Ex Parte*, Attachment 2 at 8.

[62] *See, e.g., Time Warner Ex Parte*, Attachment 2 at 10.

[63] *See Application of BellSouth Corporation, et al., Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539, 603, para 115 (1997) (*BellSouth South Carolina Order*) The Commission has noted that "[d]elays in the return of the FOC notice therefore delay a new entrant's ability to inform its customers when service will begin." *Id.*, 13 FCC Rcd at 606, para 122. *See also, Application of BellSouth Corp., et al Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, Memorandum Opinion and Order, 13 FCC Rcd 6245, 6267, para. 35 (1998); OSS Notice, 13 FCC Rcd at 12846, para. 61.

[64] *See BellSouth South Carolina Order*, 13 FCC Rcd at 604, para. 117; *see also*, OSS Notice, 13 FCC Rcd at 12846, para. 60.

Reject Timeliness should be calculated from the time the incumbent receives an order at its OSS interface to the time the rejection notice leaves its OSS gateway. Commenters are encouraged to discuss alternative standards and explain why these standards would be more appropriate. We also seek comment on whether incumbent LECs should exclude rejected orders and incumbent LEC Test Orders (from FOC Timeliness), Unsolicited FOCs,[65] Disconnect service requests, Cancelled service requests and Record service requests from this measurement. Additionally, we seek detailed comment on the proper performance standard for this measurement and the appropriate penalty for performance below the standard, and how the standard and penalty should be modified for different requested facilities. For example, we ask whether several hours, 48 hours, 72 hours or some other period may be appropriate and whether a penalty of some dollar amount for each hour or day above the standard is appropriate. In addition to the time period, we seek comment on the percentage of the notices that should be returned within that period, and whether the proposed standards outlined above are appropriate. Finally, we seek comment on whether this measure is essential for determining whether the incumbent is providing access in a nondiscriminatory and just and reasonable manner or whether some alternative is preferable.

b. Order Completion Notifier Timeliness

41. We request comment on whether incumbent LECs should measure the amount of time between the actual order completion and the distribution of the order completion notice to the competitive carrier. As noted in past proceedings, an order completion notice informs a competitive LEC that the incumbent LEC completed the installation of the service requested by the particular order. This notice not only informs the competing carrier that it has responsibility for the customer's care but allows the competitor to begin billing the customer for service.[66] Absent this notice, the competitive LEC does not know that the customer is in service, and cannot begin addressing any maintenance problems experienced by the customer. Moreover, the Commission has noted that the untimely receipt of an order completion notice affects a competitor's ability to serve its customers at the same level of quality that the incumbent provides to its retail customers.[67]

42. We seek comment on how this measurement should be calculated and which exclusions should be applied.[68] We further request comment on whether billing notification timeliness should be included as part of this measurement in addition to the provisioning

---

[65] *See, e.g., WorldCom Aug. 6 Ex Parte*, Attachment 2 at 16 (defining an unsolicited FOC as a "supplemental FOC issued by the ILEC to change the due date or for other reasons, although no change to the ASR was requested by [the CLEC]").

[66] *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd at 4052-53, para. 187.

[67] *Id.*

[68] *See, e.g., WorldCom Oct. 1 Ex Parte*, Attachment 2 at 12 (recommending that this measurement be calculated as an interval and that the performance standard be set at one hour for notices that are processed electronically and 24 hours for notices requiring manual intervention).

completion notice.[69] We also seek comment on the appropriate standards and the associated penalties should the incumbent fail to meet those established standards.

c. Percentage of Jeopardies

43. Competing carriers require timely notice of a possible missed appointment in order to inform their customers of the potential need to reschedule the service installation appointment.[70] We seek comment on whether it is important for customers to receive advance notice that an appointment will be missed and, if so, whether incumbent LECs should measure the number of orders with missed due dates that receive advance jeopardy notices.

44. We seek comment on whether incumbent LECs should measure the extent to which competing carriers are being notified that their customers' orders are in jeopardy of not being completed as scheduled prior to the committed due date (Percentage of Jeopardies).[71] This information will enable a competing carrier to determine whether a significantly higher percentage of its orders are placed in jeopardy than an incumbent LEC's retail orders. Although there are many reasons why orders are placed in jeopardy, a higher jeopardy rate for competing carriers might reflect a discriminatory preference by an incumbent LEC to complete its own orders first. We seek comment on the adequacy of this measurement and, as is true of all the measurements offered for comment in this Notice, whether the internal processes of incumbent LECs permit them to report this metric. Parties should also comment on the appropriate exclusions and business rules for this measurement. Specifically, we seek comment on whether incumbent LEC Test Orders, Disconnect Orders, incumbent LEC Administrative Orders, and Orders that are incomplete or cancelled should be excluded from the measurement calculation.

45. We also seek comment on the appropriate performance standard for this measurement and associated penalties for failing to meet the standard. Specifically, parties should comment on whether the Commission should require the incumbent LEC to account for 100 percent of missed committed due dates, providing, for example, notice to the competitive

---

[69] *See, e.g., Bell Atlantic New York Order*, 15 FCC Rcd at 4053-54, para. 188 (stating that Bell Atlantic provides both billing and work completion notices to competing carriers).

[70] In the *BellSouth South Carolina Order*, the Commission explained that "[i]t is critical to a competing carrier's ability to compete that it receive information concerning the status of its customers' orders in substantially the same time and manner as the BOC provides such information to its retail operations." *BellSouth South Carolina Order*, 13 FCC Rcd at 603-604, para. 115 (citing *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, 20642, para. 186 (1997) (*Ameritech Michigan Order*).

[71] *See, e.g., WorldCom Oct. 1 Ex Parte*, Attachment 2 at 11 (calculating the measurement as the number of order jeopardy notifications in a reporting period divided by the number of missed due dates during that reporting period, multiplied by 100). *See also, Time Warner Ex Parte*, Attachment 2 at 17 (number of missed committed due dates where notice is received divided by number of missed committed due dates).

LEC, the reason for the missed due date and an expected completion date.[72] We also ask parties to identify a period of time by which incumbent LECs should provide jeopardy notices. For example, we seek comment on whether jeopardy notices should be provided as soon as the incumbent LEC enters information in its OSS that indicates an order may not be completed by the existing due date, but no later than close of business on the due date or some other timeframe (*e.g.*, due date minus one or two days). We ask parties to consider whether this type of information could be readily verified. We seek comment on this and any other appropriate performance standard

3. Provisioning Measurements

46. We set forth for comment five provisioning measurements that are designed to assess whether an incumbent LEC provisions competitors' orders within the same period of time and with the same quality of service with which it provisions its own retail orders. The five provisioning measurements are: (1) Percentage On Time Performance, (2) Average Delay Days on Missed Installation Orders, (3) Installation Quality, (4) Percentage Missed Appointments, and (5) Open Orders on Hold Status. The timely provisioning of services and facilities is critically important to competing carriers' ability to compete effectively in the markets for telecommunications services.

47. Moreover, we seek comment on whether the provisioning measurements set forth below serve the goal of clarifying which performance is adequate to satisfy the statutory requirements without increasing carriers' overall regulatory burdens. In particular, we seek comment on whether these categories would permit sufficient data disaggregation to allow for the detection of discrimination, again, without increasing carriers' overall regulatory burdens. We also seek comment on whether less pronounced disaggregation would sufficiently detect instances of discrimination, but would impose less of a reporting burden on incumbent LECs.

a. Percentage On Time Performance

48. We set forth for comment the requirement that incumbent LECs measure the percentage of competitive LEC orders that were provisioned on or before the scheduled due date (Percentage On Time Performance).[73] This measurement seeks to assess whether an incumbent LEC is consistently meeting its commitment to install orders from competing carriers on or before the commitment date. Specifically, we set forth for comment the proposal that incumbent LECs measure the percentage of orders completed on or before the first confirmed due date, or a subsequent carrier-initiated and verified change in the order due date.[74]

---

[72] *See Time Warner Ex Parte*, Attachment 2 at 17.

[73] *See, e.g., Verizon Ex Parte* at 3 (recommending the inclusion of a Percentage On Time Performance for LNP Hot Cut).

[74] *See, e.g., SWBT Texas Order*, 15 FCC Rcd at 18386, 18503, paras. 72, 295 (interconnection trunks and xDSL, respectively); *Bell Atlantic New York Order*, 15 FCC Rcd at 4057-58, 4060-61, 4097-98, paras. 95, 201, 283.

49. We seek comment regarding whether this measurement, as defined, will create an incentive for incumbent LECs to set due dates further into the future so as to mask poor performance. If so, we ask parties to consider how such behavior can be avoided, for example, we request comment on whether provisioning completion intervals should be adopted, and what should those intervals be for the various facilities.[75] We also seek comment regarding whether including carrier-initiated and verified changes to the order due date in this measure will address competitive carriers' concerns that incumbent LECs may modify order due dates for their own purposes. We seek comment on whether the measurement, as described above, is sufficient to assess the incumbent LEC's timeliness or whether greater detail or alternative measurements are necessary.

50. We also seek comment regarding whether orders not completed on time due to CNR situations should first be verified before excluding them in the relevant metrics. We seek comment on whether CNR and NA situations should be excluded only if verified by the competitive carrier. We seek comment regarding the best way to address verification of CNR situations that may result in installation delays. We ask commenters to describe their "best practices" for verifying CNR situations. We also seek comment on which additional exclusions should apply to this measurement. Specifically, we seek comment on whether incumbent LEC Test Orders, Disconnect Orders, incumbent LEC Administrative Orders, Record Orders and Orders that are not complete should be excluded from the measurement calculation.[76]

51. Finally, we seek comment on the appropriate performance standard for this measurement. We note that some competitive carriers have requested that the Commission require that the percentage of installation commitments provisioned on time be greater than or equal to 96 percent for special access services.[77] We seek comment on whether the competing carriers' proposed percentages should be applicable to UNEs and interconnection trunking or whether some other measurement is more appropriate, and also ask parties to comment on whether parity with the incumbents' retail offering is a measurable and meaningful standard for this metric.

b. Average Delay Days On Missed Installation Orders

52. We seek comment on whether incumbent LECs should measure the average amount of time by which they miss committed installation due dates (Average Delay Days on Missed Installation Orders). This measure seeks to assess the extent to which installations are delayed due to actions on the part of the incumbent LEC. This measure may assist the

---

[75] *See, e.g., WorldCom Oct. 1 Ex Parte*, Attachment 2 at 31 (recommending, among others, a one-day interval for UNE-P/resale requests; a three-day interval for 2- and 4-wire analog voice grade loops; and a seven-day interval for 4-wire digital loops involving more than 15 lines).

[76] *See, e.g., WorldCom Oct. 1 Ex Parte*, Attachment 2 at 4; *Time Warner Ex Parte*, Attachment 1 at 1.

[77] *See, e.g., Time Warner Ex Parte*, Attachment 2 at 1; *cf. WorldCom August 6 Ex Parte*, Attachment 2 at 8 (proposing a 98 percent performance threshold).

Commission in evaluating the extent to which the incumbent LEC fails to meet its committed due date and the impact on competing carriers' customers.[78] Specifically, for orders missed due to incumbent LEC reasons, we set forth for comment the proposal that the incumbent LEC measure the average number of days between the first confirmed commitment due date (or subsequent carrier-initiated and verified due date) and the actual work completion date. We seek comment on defining this measurement in such a manner. We also ask parties whether a more comprehensive view of provisioning may be achieved by requiring incumbents to measure the average carrier-requested installation interval compared to the average incumbent LEC offered interval and the actual average installation interval.[79]

53. We seek comment on all applicable exclusions, including CNR and NA situations and whether Saturdays, Sundays, and legal holidays should be excluded as Delay Days. We also seek comments on whether the measurement should exclude incumbent LEC Test Orders, Disconnect Orders, incumbent LEC Administrative Orders, Record Orders and Orders that are not complete.[80]

54. We also seek comment regarding the appropriate performance standard for this measurement. Some parties have proposed, for example, that the Average Delay Days On Missed Installation Orders should be less than or equal to three days.[81] Another proposal suggests that we require the incumbent LEC to report the delay days on missed installation orders distributed by: 1 day, 2-5 days, 6-10 days, 11-20 days, 21-30 days, 31-40 days and > 40 days.[82] We seek comment on these proposals or whether some alternative distribution is more appropriate. We also seek comment as to whether choosing any particular distribution may have the unintended effect of adversely altering incumbent LEC performance.

c. Installation Quality

55. We seek comment on whether incumbent LECs should measure the percentage of completed orders for which competitive LECs file trouble reports (Installation Quality). This measurement seeks to assess the quality of the installation work performed for competing carriers. Trouble reports often indicate that a customer has not received the exact service ordered, either because the carrier provided the wrong type of service or because the customer received an improperly functioning facility.[83] Accordingly, we seek comment on whether

---

[78] *See, e.g., SWBT Texas Order*, 15 FCC Rcd at 18495-6, para. 280 (missed installation percentage). *Bell Atlantic New York Order*, 15 FCC Rcd at 2057-58, 4060-61, paras. 195, 201.

[79] *See WorldCom August 6 Ex Parte*, Attachment 2 at 10.

[80] *See, e.g., Time Warner Ex Parte*, Appendix 1 at 3.

[81] *See, e.g., id.*; *WorldCom August 6 Ex Parte*, Attachment 2 at 9.

[82] *WorldCom August 6 Ex Parte*, Attachment 2 at 9.

[83] *See, e.g., SWBT Texas Order*, 15 FCC Rcd at 18495-96, para. 280 (30 day trouble); *Bell Atlantic New York Order*, 15 FCC Rcd at 4100-1, para. 284 (30 day trouble rate), 2057-58, 4060-61, paras. 195, 201.

incumbent LECs should calculate the percentage of loops or circuits installed where a reported trouble was found in the network within the first 30 days after completion of an order. We seek comment regarding whether this measurement will provide adequate information about whether the incumbent LEC installed the facility correctly, and whether the 30-day measurement is an appropriate period.

56. We seek comment on whether the calculation for the 30-day reporting period should be based on the creation date of the trouble ticket and whether it should include trouble reports created on the same day or the day following the incumbent LEC's completion of the installation. We also seek comment on the various Dispositions Codes to be included in a network trouble report, including codes for Drop-wire, Outside Plant, or Central Office,[84] and Found OK and Test OK where a trouble condition was not found. We seek comment on whether any additional codes are needed and whether it is necessary to further define these codes in any adopted rules.

57. We also seek comment on all exclusions that should apply to this measurement. In particular, we seek comment on whether subsequent reports, *i.e.*, when additional customer calls are made while the trouble is pending, troubles closed due to customer action, CPE troubles, as well as troubles reported by the incumbent LEC in the course of performing preventative maintenance are properly excluded. We also seek comment on whether 30 days is an appropriate amount of time for measuring trouble reports for new orders. We also ask whether the amount of detail in this measure provides the quality of installation information that the Commission might find useful.

58. We request that parties discuss appropriate performance standards and associated penalties for this measure. We note that some parties have proposed that the Commission adopt a performance threshold for this measurement of less than or equal to 1 or 1.5 trouble reports within 30 calendar days per 100 circuits installed,[85] while another party recommends a parity standard comparing the incumbents' retail and wholesale performance.[86]

d. Percentage Missed Appointments

59. We seek comment on whether incumbents should measure the number of missed customer appointments for competitive carriers (Percentage Missed Appointments).[87] By comparing the magnitude of missed appointments for competing carriers with the same for

---

[84] These terms refer generally to where the trouble is located (*e.g.*, in the central office as opposed to outside plant).

[85] *Time Warner Ex Parte*, Attachment 2 at 4; *WorldCom Aug. 6 Ex Parte*, Attachment 2 at 19.

[86] *Verizon Ex Parte* at 3.

[87] *See, e.g., Verizon Ex Parte* at 3; *BellSouth Ex Parte* at 2 (Percent Installation Appointments Met); *Covad Oct. 1 Ex Parte* at 4.

incumbent LEC retail appointments, a competing carrier can determine whether its customers are receiving service in a nondiscriminatory and just and reasonable manner.[88]

60. We seek general comment on the adequacy of this measurement as an indicator of discriminatory conduct and whether additional detail or further disaggregation can be useful without increasing carriers' overall regulatory burdens. Specifically, we request comment on whether the Commission should include within this measurement or use instead the Percentage Missed Appointments Due to Lack of Facilities. To the extent incumbent LECs attribute past provisioning problems to their failure to anticipate unprecedented increases in demand for facilities, it may be appropriate to monitor and analyze instances of facilities deficits. Requiring incumbent LECs to measure Percentage Missed Appointments Due to Lack of Facilities may serve to signal to all parties the need for additional facilities. With respect to this specific measurement, we request comment on how "lack of facilities" should be defined and what exclusions should apply to this measurement.[89] For example, we seek comment on whether the exclusions should include only lack of transmission facilities or whether they should also include a lack of necessary equipment to attach to the transmission facilities.

61. We ask the parties to define the relevant business rules and exclusions. Specifically, we seek comment on whether incumbent LEC Test Orders, Disconnect Orders, incumbent LEC Administrative Orders, Record Orders and Orders that are not complete should be excluded from the measurement calculation.[90] In addition, we seek comment on an appropriate performance threshold for this measurement and associated penalties for failing to meet the threshold.

e. Open Orders in Hold Status

62. We seek comment on whether incumbent LECs should measure the percentage of circuits that are past the committed due date as of the end of the reporting period (Open Orders in Hold Status). This measurement seeks to capture order backlog by monitoring the status of past due orders.[91] For example, if the incumbent LECs report on a monthly basis, an order in hold status would be any order that is overdue at the end of the month, including open orders that have not been assigned a completion date due to incumbent LEC reasons. By measuring those orders whose due dates have passed, the Open Orders in Hold Status measurement will capture those

---

[88] *See, e.g., SWBT Texas Order*, 15 FCC Rcd at 18385-86, para. 70 (interconnection trunks); *Verizon Pennsylvania Order*, at para. 80 (xDSL-capable loops).

[89] We also request comment on whether the frequency within which competitive carriers receive "lack of facilities" responses from incumbent LECs may be captured better in an ordering performance measurement and what that measurement would be.

[90] *See, e.g., Time Warner Ex Parte*, Attachment 1 at 6.

[91] *See, e.g., SWBT Texas Order*, 15 FCC Rcd at 18385-86, para. 70 (for interconnection trunks).

orders not covered by the Percentage On Time Performance measurement, which, as described above, measures orders that are completed by the committed due date.

63. We seek comment on whether we should require incumbent LECs to measure the number of open orders that, at the close of the reporting period, have been in a hold status for more than ten calendar days, 30 calendar days or some other specified time period. In particular, we ask whether it may be beneficial to require the incumbent LEC to report the number of Open Orders In Hold Status distributed by: 1-5 days, 6-10 days, 11-20 days, 21-30 days, 31-40 days and > 40 days rather than a ten- and 30-day interval, or whether some alternative distribution is more appropriate.[92] Again, we seek comment on whether choosing any particular interval may have the unintended consequence of adversely affecting incumbent LEC performance.

64. We also seek comment on the usefulness of requiring incumbent LECs to report the percentage of all cancellations processed during the reporting period where the cancellation took place after the committed due date. We seek comment on whether such additional reporting detail is necessary to capture fully the magnitude of any realized discrimination and on whether such additional detail can be imposed without increasing carriers' overall regulatory burdens. We also seek comment on whether incumbent LEC Test Orders, Disconnect Orders, incumbent LEC Administrative Orders, orders that are incomplete or cancelled before the due date, orders that have passed the due date or are delayed due to competitive carrier or end-user delay, and orders not assigned a completion date should be excluded from the measurement calculation.[93] We seek comment on the performance standard for this measurement and the associated penalties for failing to meet the standard. Should the Commission require, for example, that the number of open orders in hold status be less than or equal to one percent for orders held greater than ten days and zero percent for those held greater than 30 days?[94] As a general matter, we seek comment on the utility of measuring the number of Open Orders in Hold Status and ask parties to consider whether there are alternative measurements that are more critical in evaluating the incumbent LEC's overall provisioning performance.

4. Maintenance and Repair Measurements

65. We offer for comment three maintenance and repair measurements,[95] described below, for incumbent LECs to calculate for themselves and for competing carriers. As part of their obligation to provide nondiscriminatory access to OSS functions, incumbent LECs must provide requesting carriers with nondiscriminatory access to their maintenance and repair

---

[92] *See, e.g., WorldCom Oct. 1 Ex Parte*, Attachment 2 at 14 (recommending a performance standard for the following intervals: 1-10 days; 11-30 days; 31-60 days; and 61 days or longer).

[93] *See Time Warner Ex Parte*, Attachment 2 at 15.

[94] *See id.*

[95] The three metrics are: (1) Trouble Report Rate, (2) Repeat Trouble Report Rate, and (3) Time to Restore.

systems.[96] A competing carrier that provides service through resale or through UNEs remains dependent upon the incumbent LEC for maintenance and repair.[97] Because the incumbent LEC performs analogous maintenance and repair functions for its retail operations, it must provide competing carriers access that enables them to perform maintenance and repair functions "in substantially the same time and manner" as the incumbent.[98] Equivalent access ensures that competing carriers can assist customers experiencing service disruptions using the same network information and diagnostic tools that are available to incumbent LEC personnel.[99] Without equivalent access, a competing carrier would be placed at a significant competitive disadvantage, as its customer would perceive a problem with an incumbent LECs network as a problem with the competing carrier's own network.[100]

66. We seek comment on whether these three measurements will properly and adequately assess whether incumbent LECs provide repair and maintenance in a nondiscriminatory manner, and whether their adoption would avoid increasing the burden on incumbent LECs. Additionally, we seek comment on whether this assessment should be done with fewer, more, or different measurements.

a. Trouble Report Rate

67. We seek comment on whether incumbent LECs should measure the percentage of provisioned loops or circuits with troubles reported within a certain period of time (Trouble Report Rate).[101] This measure is potentially useful because a competing carrier can determine on an ongoing basis whether its customers experience more incidents of trouble than the incumbent LEC's end users.[102]

68. We seek comment on precisely how this measurement should be calculated and over what period of time should it be reported.[103] Parties have submitted proposals

---

[96] *See Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692, para. 145; *see also, Ameritech Michigan Order*, 12 FCC Rcd at 20614, para 131.

[97] *See Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para 212; *see also,* OSS Notice, 13 FCC Rcd at 12853, para. 80.

[98] *Bell Atlantic New York Order*, 15 FCC Rcd at 4067, para. 212.

[99] *Id.*

[100] *See id.; see also, Second BellSouth Louisiana Order*, 13 FCC Rcd at 20692, para. 145.

[101] *See Time Warner Ex Parte*, Attachment 1 at 10; *WorldCom Aug. 6 Ex Parte*, Attachment 2 at 13.

[102] *See, e.g, SWBT Texas Order*, 15 FCC Rcd at 18496-97, para. 281 (loop trouble); *Bell Atlantic New York Order*, 15 FCC Rcd at 4074, para. 223; OSS Notice, 13 FCC Rcd at 12854, para. 83.

[103] *See* OSS Notice, 13 FCC Rcd at 12854, para. 83 (proposing a 30-day timeframe). We note that this measurement differs from the Installation Quality measurement discussed above because the latter measurement only captures troubles reported within the first 30 days of installation.

recommending a standard for the rate of troubles reported as low as one percent[104] and as high as ten percent.[105] We therefore seek comment on the appropriate standard for this measurement, including an explanation about why a higher or lower percentage should be adopted and the associated penalties for failing to meet the standard. We also seek comment on which exclusions should apply to this measurement. Specifically, we request comment on whether incumbent LEC-reported administrative troubles, CPE troubles, subsequent troubles occurring with a report pending and informational tickets should be excluded from the measurement calculation. As is true of the other measurements discussed herein, the Commission encourages commenters to discuss alternative standards and why these standards may be more appropriate.

b. Repeat Trouble Report Rate

69. We seek comment on whether incumbent LECs should measure the percentage of trouble tickets that are repeat trouble tickets, generated within a 30-day period (Repeat Trouble Report Rate).[106] Disparities in repeat troubles may indicate that an incumbent LEC provides inferior maintenance support in the initial resolution of troubles, or supplies network components of an inferior quality.[107]

70. We seek comment on whether the Repeat Trouble Report Rate should be measured by dividing the number of repeat troubles generated in a 30-day period by the total number of trouble tickets received in this same period of time.[108] We seek comment on the adequacy of measuring in such a manner, including whether 30 days is an appropriate amount of time and whether additional periods (*e.g.*, 60 days, 90 days) should be considered in addition to the 30-day period. We also seek comment on the appropriate standard for this measurement and which exclusions should apply, and the associated penalties for failing to meet the standard. Specifically, we seek comment on whether incumbent LEC-reported administrative troubles, CPE troubles, subsequent troubles occurring with a report pending, and informational tickets should be excluded from the measurement calculation. Again, commenters are encouraged to discuss alternative measurements and present reasons why other proposals, including this one, are superior or inadequate and inappropriate.

c. Time To Restore

71. We seek comment on whether incumbent LECs should measure their promptness in restoring services after a competing carrier refers a problem to it for resolution (Time to

---

[104] *See Time Warner Ex Parte*, Attachment 1 at 10.

[105] *See WorldCom Aug. 6 Ex Parte*, Attachment 2 at 13.

[106] *See, e.g., Time Warner Ex Parte*, Attachment 1 at 12.

[107] *See, e.g., SWBT Texas Order*, 15 FCC Rcd at 18496-97, para. 281 (loop repeat trouble); *Bell Atlantic New York Order*, 15 FCC Rcd at 4073-75, paras. 222-24; OSS Notice, 13 FCC Rcd at 12854, para. 84.

[108] *See* OSS Notice, 13 FCC Rcd at 12854, para. 84 (proposing the same means of calculating this metric).

Restore).[109] This measure would allow a competitive LEC to gauge whether its customers' services are repaired as quickly as an incumbent's customers.[110]

72. We request comment on whether incumbent LECs should measure the time from when a problem is reported to it to the time when it returns a trouble ticket resolution notification to the competitive LEC.[111] While this measurement typically captures the mean, or average, amount of time to restore service, we seek comment on the appropriateness of calculating the measurement as a percentage. We also seek comment on which exclusions should apply to this measurement. Specifically, we seek comment on whether incumbent LEC-reported administrative troubles, CPE troubles, subsequent troubles occurring with a report pending, and informational tickets should be excluded from the calculation of this measurement. We also seek comment on the appropriate standard for this metric. In particular, we seek comment on whether a uniform standard is appropriate.

V. IMPLEMENTATION, REPORTING PROCEDURES, PERFORMANCE EVALUATION AND STATISTICAL ISSUES

A. Implementation

1. Data Validation and Audits

73. As a threshold matter, we seek comment regarding data validation and audit procedures, and we underscore the importance we attach to the reliability of all data gathered and stored in connection with national performance measurements. In order to be meaningful, the data generated by any measurements we might adopt must be valid, accurate, and reproducible. Moreover, since these measurements may, for instance, show potential harm to a market or form the basis for an enforcement action, it is essential that the reported data be accurate. In particular, we seek comment on whether the raw data underlying a performance measurement should be stored in a secure, stable, and auditable file, and we seek comment on any other safeguards that we should adopt to minimize potential disputes over the accuracy and validity of the collected data, and what penalties should be imposed in the event that data inaccuracies are detected.[112] We also seek comment on the appropriate method to ensure the valid and accurate implementation of any business rules established for the measurements, exclusions permitted under the measurements, and calculations of adopted standards and benchmarks.

---

[109] *See, e.g., WorldCom Aug. 6 Ex Parte*, Attachment 2 at 14

[110] *See, e.g., SWBT Texas Order*, 15 FCC Rcd at 18496-97, para. 281 (loop average time to restore); *Bell Atlantic New York Order*, 15 FCC Rcd at 4116, para. 312; OSS Notice, 13 FCC Rcd at 12854, para. 82.

[111] *See, e.g., WorldCom Oct. 1 Ex Parte*, Attachment 2 at 15.

[112] Section 412 provides that statistics, tables, and figures contained in carrier reports are prima facie evidence for purposes of investigations by the Commission and in all judicial proceedings. 47 U.S.C. § 412. Thus, reporting carriers have a duty to report accurately their data and, thus, any data submitted by incumbent LECs should be presumed accurate.

74. Similarly, we seek comment regarding whether audit procedures would further ensure that both regulators and interested parties may trust the accuracy and validity of the incumbent LEC-generated and reported data and whether such procedures can be instituted without increasing carriers' overall regulatory burdens. We also seek comment on the extent to which such audits may permit a minimally burdensome comparison of the incumbent LECs' records with the records of the affected competitors. We seek comment on whether the substantial benefit of reliable data, including the conservation of both regulatory and industry resources that occurs when all parties have confidence in the accuracy and validity of the data, justifies the cost of audits. In the event that we adopt auditing procedures for national performance measurements, we ask parties to discuss the most appropriate entity to conduct such audits (*e.g.*, Commission staff auditors; independent, third-party firms; or incumbent-run audits with Commission staff participation); the appropriate frequency of audits; and, on a related matter, by what trigger or mechanism should such audits occur. We also request comment on whether any adopted audit requirements should sunset (*e.g.*, after a certain number of years, or after several determinations by the auditor that an incumbent LEC has reported its data accurately). Moreover, we also seek comment on whether any audit requirements that the Commission may adopt should be applied only to a particular class of carriers (*e.g.*, BOCs). Alternatively, in lieu of audits, we seek comment on the sufficiency of requiring incumbents to post their raw data on an accessible web site to permit competitive LECs to use their own internal data to check directly the accuracy of portions of the incumbent LEC's data.

2. Workshops

75. We note that numerous states have successfully used collaborative processes, where all segments of the industry work together to develop and refine performance measures, and we seek comment on whether national performance measures and standards would also benefit from development and refinement through implementation workshops based on general guidance from the Commission regarding the scope, number and applicability of performance measurements and standards. We seek comment on when and how frequently these workshops should occur. Numerous state regulators have become expert in developing performance metrics, and we would expect to draw upon their expertise at such workshops should the Commission decide to adopt national measurements and standards. Accordingly, we ask commenters to address whether these workshops should be run by both the Commission and state regulators.

76. Parties may also use workshops to discuss the best practices for provisioning UNEs. For example, parties might discuss the effectiveness of CNR hotlines or similar industry-sponsored initiatives. Parties may also find workshops a useful venue for weighing alternative values, such as the relative desirability of faster provisioning intervals with less assurance of successful completion versus slower intervals with a greater guarantee of successful provisioning. We acknowledge that successful workshops may require safeguards against any tendency to delay or stalemate and, thus, we seek comment on how such risks might be mitigated. For example, we ask parties to discuss whether we should adopt interim measures to take effect during the workshop process. We also seek comment whether we should set, in advance, time limits to any implementation workshops and, if so, what time limits would be