MINNESOTA
DEPARTMENT OF
COMMERCE

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DOCKET FILE COPY ORIGINAL

December 27, 2001

DEC 31 2001

96-98
98-56

Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street NW, Room 222
Washington, D.C. 20554

RE: CC Docket No. 01-318, FCC 01-311 Performance Measurements and Standards for Unbundled Network Elements and Interconnection, et. al., Notice of Proposed Rulemaking.

Dear Ms. Salas:

Pursuant to the Federal Communications Commission's Notice in the above referenced proceeding, enclosed for filing are an original and four copies of the comments of the Minnesota Department of Commerce.

Please contact Susan Peirce at 651/296-0399, susan.peirce@state.mn.us, if you have any questions about this filing.

Sincerely,

Susan L Peirce for

TONY S. MENDOZA
Deputy Commissioner of Telecommunications

TSM/SP/jd
Enclosure

No. of Copies rec'd 014
List A B C D E

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

DEC 31 2001

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

Comments of the Minnesota Department of Commerce

Susan L. Peirce
Rate Analyst
85 7th Place East, Suite 500
St. Paul, Minnesota 55101-2198
December 31, 2001

Before the
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Comments of the Minnesota Department of Commerce

Pursuant to the Notice of Proposed Rulemaking (NPRM) issued November 19, 2001, the Minnesota Department of Commerce (the Department or MN DOC) hereby files its comments. In its NPRM, the FCC sought comment on whether to adopt national performance measurements and standards. The Department applauds the FCC's decision to address wholesale service quality issues. Competitors cannot sustain their business without reliable access to customers. Competitors continue to rely on the "last mile" network of the incumbents to serve their customers. In Minnesota, for 2000, competitors reported 133,804 resold lines (3.92 percent of the total access lines in the state), 95,776 access lines using unbundled network elements leased from the ILEC (2.81 percent of the total), and 116,813 access lines served using CLEC-owned facilities (3.42 percent of the total) in their annual reports filed with MN DOC.

The use of unbundled network elements has served as one of the key ways to lower barriers to competitive entry. A consumer's first introduction to a competitive service offering is often one provided through the use of unbundled network elements. If that experience is unsatisfactory for the consumer because of poor underlying wholesale service quality, the consumer's general attitude toward competition in

general will sour. Predictable, consistent, adequate underlying wholesale service quality is therefore crucial to the development of a truly competitive telecommunications industry. Furthermore, even the best defined wholesale service quality standards will be made meaningless without an effective enforcement mechanism. To achieve these ends, the Department offers the following general principles that it believes the FCC should follow in adopting any performance standards:

National performance measurements and standards should not preempt state Commission efforts to regulate service quality performance.

The Telecommunications Act specifically preserves state commission authority to oversee the quality of telecommunications services within the state. 47 U.S.C. § 253(b). State commissions are expressly authorized to incorporate service quality requirements into interconnection agreements, and to establish or enforce other requirements of State law, including compliance with intrastate telecommunications service quality standards or requirements. 47 U.S.C. § 252(e)(3). In keeping with the authority granted to state commissions, 47 U.S.C. § 251(d)(3)(A) directs that the FCC, "shall not preclude the enforcement of any regulation, order, or policy of a State commission that... "establishes access and interconnection obligations of local exchange carriers..." as long as the state regulation or order is consistent with and does not prevent implementation of Sect 251.

State concerns regarding service quality will vary from state to state. Any effort to develop national performance standards should preserve the ability of state commissions to address areas of particular concern in their states, and to set standards that may be stricter than those contemplated by the national standards. If national standards fail to provide for the provision of adequate service in a given state, or fail to address a specific state concern, state commissions must maintain their ability to set and enforce adequate service quality standards in their states. State regulatory agencies are on the front lines of the battles competitors wage with RBOCs for entry into local markets. For this reason, state regulatory agencies can react more quickly to wholesale service quality problems as they emerge, and can tailor remedies to the particular problems arising within each jurisdiction.

National service quality standards should not undermine the efforts already put forth by states and other entities to develop service quality standards.

State commission statutory authority to address service quality efforts varies from state to state. While some state commissions have little authority to address service quality issues, other states have extensive authority to establish standards, and impose penalties for non-compliance. For example, Minnesota statutory and case law provide the Minnesota Public Utilities Commission (MPUC) authority to establish and implement benchmark wholesale service quality standards and enforcement measures. Minnesota Statutes, §§ 237.02, 237.06, 237.011, 237.081, 216.16, 216A.05; U S WEST

Communications, Inc. v. Minnesota Public Utilities, Civ. 97-913 ADM/AJB, March 30, 1999.

In addition, incumbent carriers may have voluntarily granted state commissions authority to establish and enforce wholesale service quality standards as part of stipulations to other proceedings. For example, as part of the Merger and Agreement in the U S WEST/Qwest merger proceeding, Qwest agreed to comply with interim wholesale service quality standards and payments, in addition to any requirements and penalties contained in existing interconnection agreements until permanent wholesale standards were developed in a further Commission proceeding, and to participate in the future proceeding. (MPUC June 28, 2000 Order Accepting Settlement Agreements and Approving Merger Subject to Conditions, Docket No. P3009, 3052, 5096, 421, 3017/PA-99-1192) As a result of the merger agreement, and the MPUC's authority under state and federal law, the Department is currently advocating the adoption of specific benchmark standards in a proceeding before the MPUC. (MPUC Docket No. P421/CI-00-849.) Any effort to establish national performance standards should not undermine state efforts, particularly in states with strong state authority, to ensure the provision of high quality service to the residents of their state.

Any performance standards should address the areas of pre-ordering, ordering and provisioning, maintenance and repair and billing, at a minimum.

While the NPRM discussed possible measures for pre-ordering, ordering and provisioning, maintenance and repair, it did not define any billing measurements. The MN DOC recommends inclusion of billing measurements in any potential set of standards. The MN DOC hears numerous complaints regarding billing accuracy, timeliness and completeness from competitors, and as part of the Regional Oversight Committee's third party test of Qwest systems. (See ROC OSS website, http://www.nrri.ohio-state.edu/oss/master/exceptions/exceptions.htm, KPMG Exceptions #3002- 3004, 3015-3019, 3036-3037, 3043, 3047-3050, 3079, 3081, 3088, 3096-3099.) The volume of complaints indicates that billing must be included in wholesale quality standards.

Any national service quality standards must include strong provisions for ensuring compliance.

The best national service quality standards will be meaningless without a strong enforcement mechanism to ensure compliance. As with the standards themselves, any enforcement provisions should not preempt the state's ability to address specific service quality concerns where states have such authority. Penalties and remedies established by the FCC must be high enough so that Regional Bell Operating Companies cannot simply absorb penalties as a cost of doing business, with no incentive to provide quality wholesale service. For example, depositions of U S WEST employees taken during the Qwest/U S WEST merger proceeding indicated that while managers were well aware

of Minnesota retail service quality performance standards, the Company's internal goals fell far short of Minnesota standards. U S WEST was willing to pay certain levels of penalties rather than strive for a performance level that met its Minnesota service quality obligations. (MPUC Docket No. P3009, 3052, 5096, 421, 3017/PA-99-1192, Depositions of Mike Styba and Denise Firkus.)

Any national service quality standards must have provisions for auditing, ongoing review and possible revisions.

Years of involvement with service quality standards have taught the MN DOC that the adage the "devil is in the details" holds especially true for service quality standards. Rapid technological changes in the telecommunications industry necessitate an ongoing review process to ensure that service quality standards keep pace with the state of the industry. While consistent month-to-month performance comparisons are necessary in order to evaluate performance over time, periodic scrutiny of the measurements is necessary to ensure that standards continue to accurately reflect what they intend to measure.

Data collected under any measurement scheme must also be audited on a regular basis to verify the raw data, as well as the processes and procedures surrounding data collection and reporting. As the complexity of service quality performance measurements has increased, an audit process becomes more necessary to ensure proper accounting of excluded data and disaggregated data. Auditing is of particular importance when the results are used for determining any type of penalty or performance remedy to CLECs, states, or other entities.

Conclusion

The Minnesota Department of Commerce welcomes the FCC's involvement and input on wholesale service quality standards, and urges the FCC to focus its efforts on developing well-defined, predictable standards, with strong effective enforcement mechanisms. The FCC must take care, however, to not preempt strong state efforts to address service quality concerns. States have been at the forefront of developing strong service quality standards, and must continue to have a leadership role in addressing the needs of their particular states.

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

I, **Jan Mottaz**, being first duly sworn, deposes and says:

That on the **28th** day of **December**, **2001**, she served the attached **Department of Commerce - Comments**

Docket Number(s): **CC Docket No. 01-318, FCC 01-311**

by depositing in the United States Mail at the City of St. Paul, a true and correct copy thereof, properly enveloped with postage prepaid.

X by personal service

X by express mail

by delivery service

to all persons at the addresses indicated below or on the attached list:

Magalie R. Salas, Secretary
Federal Communications Commission
9300 E Hampton
Washington, D.C. 20554

Burl Haar
PUC
121 7th Place East, Ste 350
St. Paul, MN 55101-2147

Jan Mott

Subscribed and sworn to before me
this 28th day of December 2001
Karen L Santori

KAREN L. SANTORI
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES
JANUARY 31, 2005