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

In the Matter of	)	
	)	
Performance Measurements and Standards for Interstate Special Access Services	)	CC Docket No. 01-321
	)	
Petition of U S West, Inc., for a Declaratory Ruling Preempting State Commission Proceedings to Regulate U S West's Provision of Federally Tariffed Interstate Services	)	CC Docket No. 00-51
	)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling	)	CC Docket Nos. 98-147, 96-98, 98-141
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended	)	CC Docket No. 96-149
	)	
2000 Biennial Regulatory Review - Telecommunications Service Quality Reporting Requirements	)	CC Docket No. 00-229
	)	
AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies Need to Ensure Compliance by ILECs with Their Statutory Obligations Regarding Special Access Services	)	RM 10329

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AT&T WIRELESS SERVICES, INC. COMMENTS

AT&T Wireless Services, Inc. ("AWS") hereby files these comments in response to the Notice of Proposed Rulemaking relating to performance measurements and standards for interstate special access services.[1/]

I. INTRODUCTION

AWS strongly supports adoption of national, uniform performance measurements and standards for special access services. Similar to wireline competitors of incumbent LECs, AWS is heavily reliant on incumbent LEC special access services. Moreover, AWS seldom has any choice but to utilize incumbent LEC special access services because they are often the only ones available. LECs have also steadfastly refused AWS's requests to provide these facilities as unbundled network elements ("UNEs").[2/] Given that special access services are a key element in commercial mobile radio service ("CMRS") carriers' services, it is critically important that the Commission include CMRS carriers in any performance regime adopted in this proceeding.

1/ In the Matter of Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 01-321, Notice of Proposed Rulemaking, FCC 01-339 (rel. Nov. 19, 2001) ("Notice").

2/ AWS, along with VoiceStream Wireless Corporation, has a filed a Petition for Declaratory Ruling to compel incumbent LECs to provide unbundled dedicated transport to CMRS carriers. Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Petition for Declaratory Ruling (filed by AWS and VoiceStream Nov. 19, 2001) ("AWS/VoiceStream UNE Petition"). The Commission has incorporated the AWS/VoiceStream UNE Petition into the its triennial review of unbundled network elements. Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338, Notice of Proposed Rulemaking, FCC 01-361 (rel. December 20, 2001).

II. DISCUSSION

A. INCUMBENT LEC SPECIAL ACCESS SERVICES ARE ESSENTIAL TO AWS PROVISION OF CMRS SERVICES

The Commission correctly recognizes the importance of special access services to competitive LECs and interexchange carriers.[3/] Those carriers, however, are not the only ones reliant on incumbent LEC special access facilities. Special access services are also an essential input into the provision of CMRS carriers' services. CMRS carriers such as AWS utilize special access services in the same way interexchange carriers or competitive LECs do -- to connect an end user to the carrier's point of presence. More specifically, AWS utilizes special access services to connect mobile switching centers with cell sites where antennas and other electronic equipment establish "last mile" connections with end users. Indeed, the sale of special access transport services to connect cell sites with mobile switching centers is big business for the incumbent LECs, and they are an eager supplier of such services as evidenced by their voluminous resource guides designed to advertise and sell transport and other services to CMRS carriers.[4/]

CMRS networks rely to a surprisingly large extent on wireline transport facilities. Often, the only wireless part of AWS's network is the radio frequency connection between an end user and the cell site servicing that mobile end user. Typically, the cell sites are connected to centralized switching locations through wireline facilities purchased from incumbent LEC special access tariffs. Thus, like wireline carriers, AWS utilizes special access services to fill out its network and transport traffic between centralized switching locations – called mobile switching centers -- and end users.

[3/] Notice ¶ 1.

In order to more efficiently and effectively serve end users, CMRS carriers have established tens of thousands of cell sites. AWS alone has established more than 15,000 cell sites throughout the country. These cell sites must be established throughout the CMRS carrier's service territory, whether in an urban, suburban or rural areas. Each of these cell sites must be linked to a mobile switching center or, in some cases, to an intermediate base station controller site. These centralized locations contain equipment that facilitates the hand off of calls between cell sites and switches calls to other carriers. AWS anticipates that the number of cell sites will increase substantially over the next few years in order to accommodate increased demand and to provide next generation broadband services. As the number of cell sites and centralized cell site control facilities expand, so too will CMRS carrier reliance on incumbent LEC special access services.[5/]

CMRS is increasingly being seen as a viable competitive alternative to incumbent LECs and long distance providers. Additionally, as next generation technologies roll out, CMRS carriers will be an increasingly important provider of broadband services. Indeed, as Chairman Powell recently noted, alternative, facilities-based platforms such as wireless networks offer "real competitive choices" and represent the "best hope for residential consumers" for competition.[6/] Ironically, however, this "best hope" for alternative, facilities-based competition requires nondiscriminatory access to incumbent LEC special access services. To fulfill the promise of inter-modal competition,

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[4/] See, e.g., Qwest, Wireless Carrier Resource Guide, at http://www.qwest.com/wholesale/pcat/wirelessGuide.html.

[5/] Facilities purchased from special access tariffs are also used to interconnect with other carriers for the exchange of traffic.

[6/] See FCC Chairman Michael K. Powell, Digital Broadband Migration – Part II, Speech at FCC Press Conference 4 (Oct. 23, 2001).

incumbent LEC special access services must be made available at reasonable levels of service quality and in a nondiscriminatory fashion.[7/]

B. AWS EXPERIENCES PROBLEMS IN OBTAINING SPECIAL ACCESS SERVICE FROM INCUMBENT LECS

Unfortunately, AWS's experience in obtaining incumbent LEC special access services too often mirrors that of the wireline carriers. A number of wireline carriers have already submitted evidence of the delays, poor quality and discriminatory treatment that has typified their experience with incumbent LECs' provisioning of special access service.[8/] AWS faces similar problems. AWS, like other special access customers, is entitled to a high level of performance on a consistent basis,[9/] and a remedy when performance falls below specified levels.

Another related issue is that AWS has no mechanism to ensure that it is obtaining nondiscriminatory treatment. The Commission has long recognized that, given the incumbent LECs' continuing control over bottleneck facilities, they have the incentive and ability to discriminate in favor of their CMRS affiliates.[10/] The Commission's

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[7/] CMRS providers must also be able to purchase these facilities as unbundled network elements. Purchasing (or converting these facilities to) UNEs should not affect the level of service.

[8/] Notice ¶ 1& n.3.

[9/] In a truly competitive marketplace AWS could simply switch vendors if a particular vendor was unable to provide quality services. As demonstrated herein, however, the special access services market is LEC-dominated, and there is no marketplace remedy for AWS and similarly-situated CMRS providers.

[10/] See, e.g., Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Service, WT Docket No. 96-162, Report and Order, 12 FCC Rcd 15668 (1997) ("CMRS Safeguards Order").

"safeguards" intended to protect the marketplace from incumbent LEC's favoring their CMRS affiliates over non-affiliates have recently expired.[11/] Even prior to their sunset, there was (and remains to this day) no reliable method for independent CMRS carriers such as AWS to learn if their counterpart LEC-affiliated CMRS carriers are experiencing similar special access problems or being given preferential treatment. The performance measurements, standards and reporting requirements adopted in this proceeding can address those concerns.

C. THE COMMISSION SHOULD ADOPT NATIONAL PERFORMANCE MEASUREMENTS AND STANDARDS

In order to improve the quality of special access services, AWS strongly supports the adoption of national performance measurements and standards with uniform business rules. The Commission must intercede because there is a clear market failure. Incumbent LECs continue to be dominant in the provision of these services and, therefore, market forces should not be relied upon to ensure quality services or nondiscriminatory treatment.

1. Incumbent LECs Retain Significant Market Power in the Provision of Special Access Services.

Incumbent LECs retain considerable market power in the provision of special access services. Evidence of the incumbent LECs' continuing dominance lies in the fact that, as noted above, AWS typically has no alternative but to utilize transport services from incumbent LEC special access tariffs. Incumbent LECs are the only carriers with ubiquitous transport networks that have facilities in place to or near the thousands of locations to which AWS requires transport. AWS has sought alternative suppliers but

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[11/] See 47 C.F.R. § 20.20(f) (2000).

they simply do not exist in most places. Nor , as a practical matter, could AWS self provision the thousands of miles of copper or fiber facilities that would be required to meet AWS's transport needs. As an example of its reliance on incumbent LEC transport, AWS estimates that more than ninety percent of its transport costs go to paying incumbent LECs for special access facilities.[12/] AWS last year estimated that it would spend between $200 million to $400 million on special access services nationwide.[13/]

Further evidence of incumbent LECs' continuing dominance is found in the New York Public Service Commission's ("PSC") finding that Verizon continues to dominant the market for special access services throughout the state, including southern Manhattan, one of the most if not the most competitive markets in the United States.[14/] The New York PSC found that Verizon "represents a bottleneck to the development of a healthy, competitive market for Special Services" and that, as a result, "regulation is needed to

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[12/] See AWS/VoiceStream UNE Petition at 7 (noting that VoiceStream obtains approximately ninety-six percent of its high capacity special access circuits from incumbent LECs).

[13/] See Letter from Douglas I. Brandon, AT&T Wireless, to Michelle Carey, Chief Policy and Program Planning Division, Common Carrier Bureau 4 (April 6, 2001) (submitted in CC Docket No. 96-98, June 26, 2001).

[14/] See NY PSC Case 00-C-2051, Proceeding on Motion of the Commission to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc., Opinion and Order Modifying Special Services Guidelines for Verizon New York Inc., Conforming Tariff, and Requiring Additional Performance Reporting 6-9 (June 15, 2001) ("New York Special Services Order"). See also NY PSC Case 00-C-2051, Proceeding on Motion of the Commission to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc., Order Denying Petitions for Rehearing and Clarifying Applicability of Special Services Guidelines 10 (Nov. 28, 2001) (stating that new data "corroborates our earlier finding of dominance, and shows that Verizon serves over 79.5% of the statewide market with the next largest carriers, a competitor serving 6.6%, and an incumbent serving less than 5.9% of the statewide market.").

assure the development of competitive choices, and good service quality when choices are not available."[15/] The New York PSC also found that Verizon provisioned special access services more favorably to its retail customers than to its wholesale carrier customers.[16/] As the New York PSC correctly concluded, regulation is needed where market forces cannot be relied upon to provide sufficient incentives to assure quality service and prevent discrimination. This Commission should follow the lead of the New York PSC and adopt performance measurements and standards with meaningful enforcement mechanisms.

2. Performance "Guarantees" and Similar Provisions in Incumbent LEC Tariffs Are Inadequate

The performance guarantees contained in incumbent LEC tariffs are insufficient to promote quality service provisioning and deter discriminatory conduct. To some extent this is implicit in the findings of the New York PSC described above. The existence of tariffed performance guarantees, to the extent they were available in Verizon's tariffs, did nothing to prevent the decline in service quality and discriminatory treatment found by the New York PSC.

There are a number of deficiencies with existing tariffed performance "guarantees" which render them particularly ineffective in promoting service quality and deterring discrimination. For one, tariffed performance credits are not designed to measure discriminatory conduct. Their sole utility is to provide some compensatory relief to individual carriers, but even at this the provisions are too limited and generally

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15/ New York Special Services Order at 9.

16/ New York Special Services Order at 5 (finding that, on average, Verizon met appointments only 74% of the time for carriers ordering special access services, but met 94% of its appointments when the order came from its retail customers).

ineffective. There is, for example, little consistency among the various incumbent LEC tariffs. Not all contain provisions promising installation within specific intervals or guaranteeing to restore services within set periods of time. Even when such promises are made in the tariffs, they are not backed up by any meaningful remedy.

One of the actions taken by the New York PSC to rectify this deficiency in Verizon's tariffs was to require Verizon to file a warranty tariff that would provide rebates to customers whose installation due dates were missed by Verizon.[17/] Under the rebate plan, Verizon would waive nonrecurring installation charges and the first month's recurring charge when the due date was missed. It would apply, however, to only a limited set of intrastate services, specifically, Verizon's Superpath 1.5 Mbps/s or Superpath Optical 45 Mbp/s services purchased from Verizon's state tariff.[18/] Moreover, the New York Commission recognized that the warranty tariff would not, by itself, provide sufficient incentive for Verizon to improve its overall special access services. At most, it would offer some compensation to customers who did not receive service by the promised due date.[19/]

AWS often finds that attempting to enforce those credits that are contained in tariffs is a frustrating and time-consuming experience. In many cases, credits for service interruptions, with certain exceptions for protected services for which AWS pays a premium price, are too minimal to warrant the expenditure of time and resources required

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17/ New York Special Services Order at 13.

18/ Id. at 14.

19/ Id.

to ensure that credits are appropriately applied. Typically, credits are not available until the interruption has lasted for some period of time and thereafter credits are available only for the pro rata portion of the monthly charge reflecting actual down time. For example, a credit may be available after thirty minutes and then set at a rate equal to 1/1,440th (the number 30 minute increments in a month) of the monthly charge for each 30 minutes of downtime thereafter.[20/] At these levels, in the absence of a catastrophic failure, the cost of enforcing the credit routinely exceeds the amount of the credit.

Finally, when AWS does seek to enforce credits, AWS's experience has been one of protracted, and often unresolved, disputes over the most basic parameters, such as when to "start the clock" on an outage or what events should toll the outage duration for purposes of obtaining credits. This occurs because business rules are not clearly set forth, leading to lengthy disputes about credit availability and levels. To address this problem, which unilaterally benefits the LEC, the Commission should establish uniform, clear standards that minimize the possibility of such disputes and provide for reasonable, self-executing compensation.

3. The Existence of Pricing Flexibility is Irrelevant.

The Commission seeks comment on how the deregulatory treatment of special access services in the Pricing Flexibility Order relates to the potential imposition of special performance measures and standards. The Commission asks, for example, if the Commission should refrain from requiring performance measurements on those portions of the special access circuit that have received pricing flexibility.

[20/] See, e.g., BellSouth Telecommunications, Inc., F.C.C. Tariff No. 1, § 2.4.4(B)(1) at 17th Revised Page 2-30 (eff. June 12, 1999) available at http://cpr.bellsouth.com/pdf/fcc/1002.pdf.

The pricing flexibility regime has no relevance to the question of whether the Commission should adopt national performance measurements and standards for special access services. Pricing flexibility does not equate with true competition. The collocation-based triggers for pricing flexibility established by the Commission[21/] are no guarantee that competitive transport is available to AWS. Incumbent LECs can obtain pricing flexibility by showing that competitors have collocated in only a portion of the wire centers in an Metropolitan Statistical Area (MSA). There may be no competitors collocated in the remaining wire centers in the MSA. A CMRS carrier, however will have cell sites throughout the MSA – not just in the most densely populated areas of the MSA – and will require transport throughout the MSA. Moreover, the existence of one or more collocation arrangements in a wire center does not by any means equate with the existence of competitive transport in that wire center to the specific locations required by AWS. Thus, a demonstration sufficient to warrant pricing flexibility provides precious little evidence that AWS has an alternative to the incumbent LEC's special access services for transport to AWS's cell sites.

That pricing flexibility is not synonymous with competition is also borne out by AWS's experience. Generally, even in areas where incumbent LECs have received pricing flexibility, the incumbents continue to relegate AWS to existing special access tariffs. The incumbent LECs' refusal to negotiate off-tariff pricing terms with AWS in areas where the incumbents have obtained pricing flexibility suggests lack of competition

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[21/] Pursuant to the Pricing Flexibility Order, incumbent LECs may obtain regulatory relief by showing that competitors have collocated in specified percentages of the incumbent's end offices. Access Charge Reform, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, FCC 99-206 ¶ 82 (rel. Aug. 27, 1999) ("Pricing Flexibility Order")

in those areas. If the incumbent perceived a threat of competition, it presumably would be willing to negotiate with AWS. Moreover, it has not been AWS's experience that it has any greater ability to obtain alternative transport in areas where incumbent LECs have received pricing flexibility.

Finally, it does not appear that incumbent LECs are utilizing their pricing flexibility relief to compete on the basis of enforceable service level commitments. In other words, whatever competitive pressures exist to warrant pricing flexibility relief have not translated into pressure on the incumbent LECs to compete on terms of service quality. To the contrary, it appears that the incumbent LECs may be using their ability to tailor contract tariffs to stifle enhanced performance requirements. BellSouth, for example, has filed several contract tariffs with the Commission which simply adopt by reference BellSouth's generally tariffed performance guarantees.[22/] Perhaps more problematic, BellSouth's contract tariffs effectively freeze the performance guarantees at current levels for the life of the contract tariff.

More specifically, BellSouth's contract tariff provides that the customer that had entered into the contract with BellSouth would obtain the generally tariffed performance guarantees available as of the date the contract tariff became effective, and "any new or additional performance measures and remedies that may become applicable . . . shall not apply to services subject to this Contract Tariff unless [BellSouth] and customer negotiate

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[22/] See e.g., BellSouth Telecommunications, Inc., F.C.C. Tariff No. 1, § 25.5.1(F)(3)(d) at Original Page 25-53 (eff. Dec. 20, 2001) available at http://cpr.bellsouth.com/pdf/fcc/1025.pdf.

an amendment to this Contract Tariff."[23/] Thus, carriers entering into these contract tariffs may have to negotiate with BellSouth in order to enjoy the benefits of the performance metrics adopted in this proceeding, presuming BellSouth would agree. BellSouth's contract tariff could thus make it difficult for customers to avail themselves of the benefits of any performance metrics adopted in this proceeding. Accordingly, in order to ensure that LECs do not use their market power to evade the agency's policies, the Commission should declare that any standards adopted in this proceeding are a "floor" and invalidate any inconsistent portions of a LEC's federal tariffs.

D. SPECIFIC MEASUREMENTS AND STANDARDS

A number of parties have submitted *ex parte* communications proposing specific performance measurements and standards for incumbent LEC provision of special access services, that AWS believes address the appropriate scope of activities to be covered.[24/] AWS agrees that, at a minimum, performance metrics should address the timeliness of FOC delivery, the timeliness and quality of installation, and ongoing performance. AWS does not, at this time, propose its own, separate set of measurements and standards. AWS does request that, as a general matter, the Commission ensure that the set of measurements and standards it ultimately adopts adhere to the following principles.

Most fundamentally, incumbent LEC provisioning of special access services to CMRS carriers must comply with any measurements and standards adopted by the Commission. CMRS carriers must be able to avail themselves of any remedies designed

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23/ Id. (emphasis added).

24/ See, e.g., Notice ¶ 16 n.43 (identifying proposed *ex parte* submissions with proposed metics). A Joint Industry Proposal on special access services is being submitted which also appears to address the appropriate activities.

to compensate individual carriers when performance standards are missed. Additionally, incumbent LEC provisioning of special access services to CMRS carriers must be included in the reporting dimensions. This issue is further addressed below in the discussion of reporting requirements.

As has been indicated above, it is critical that the business rules accompanying each metric be uniform, clear and sufficiently detailed to minimize future disputes. It is particularly important that the start and stop times for any recorded intervals be specifically defined and the exclusions be limited and narrowly-crafted to avoid gamesmanship. Because these measures are remedial in nature, the Commission should also declare that any claimed exclusions shall be narrowly-construed.

The establishment of metrics and penalties in the proceeding should not prejudice the ability of carriers to obtain credits under performance guarantees in special access tariffs to the extent that they exceed metrics established in the proceeding, or provide guarantees for areas not covered by the national standards. For example, some incumbent LEC tariffs provide for a credit equal one month's worth of charges if protected special access services are not restored within one second.[25/] Carriers should continue to receive such credits pursuant to existing tariffs.

[25/] See, e.g., Qwest Corporation, F.C.C. Tariff No. 1, § 7.1.2(F)(2)(b) at Original Page 7-76 (eff. Aug. 8, 2000) available at http://tariffs.uswest.com:8000/docs/TARIFFS/FCC/FCC1/fcc1_s007p061.pdf#USW-TOC000002.

E. ENFORCEMENT AND IMPLEMENTATION

1. The Commission Should Adopt a Multi-Tiered Enforcement Structure.

Effective enforcement of the performance standards is critical. Any enforcement scheme adopted by the Commission should accomplish three objectives. First, penalties should be sufficiently severe to deter discriminatory conduct and provide an effective incentive to improve and maintain the quality of special access services. Second, affected carriers should be individually compensated when they receive poor performance. Third, to the extent practicable, enforcement should be self-executing in order to reduce the need for litigious enforcement proceedings. To accomplish these objectives, the Commission should adopt an enforcement mechanism that requires incumbent LECs to pay meaningful penalties to the federal treasury for poor or discriminatory performance. A second tier of payments should be made to affected carriers whenever a performance standard is missed with respect to the special access services provided to that carrier.

Failure to comply with the performance standard, as defined by the business rules for that metric, should entitle the effected carrier to an automatic credit reflected in the next wholesale invoice. The amount of the credit must be sufficient to provide some modicum of compensation to the affected carrier. The warranty tariff established by the New York PSC is one example. As noted above, pursuant to that tariff, Verizon must waive all non-recurring installation charges and the first month's recurring charge if Verizon fails to meet the installation date as a result of Verizon's actions.

The Commission should require incumbent LECs to include a similar warranty into their special access tariffs, with the following addition. A guarantee for timely

installation should include, in addition to the waiver of installation charges and first month's recurring charge, either a recurring credit for each successive period of time of delay, or an escalating credit that increases as the length of the delay increases. A one time payment to a carrier that is the same regardless of whether a due date is missed by one day or by a month does not provide an incentive for the incumbent LEC to complete the installation as quickly as possible once the due date has been missed. Moreover, the harm to the carrier increases with the length of the delay. Such an escalating credit could require a set percentage of the recurring charge for each succeeding time period of delay e.g., a credit of ten percent of the recurring charge for each day of delay past the first day; or an escalating credit schedule, e.g., 5% for the first day of delay, 10% for the second, etc., subject to an ultimate cap. Credits should be payable on a circuit-by-circuit basis, even if the missed date was for an order for multiple circuits. These types of delay credits are common in private contractual agreements in the industry.

The Commission should require incumbent LECs to include similar warranties in their special access tariffs[26/] for failure to meet the established mean time to restore interval and for exceeding the established standard for repeat troubles for the affected circuit. In each case, the credit should be applied automatically in the next available billing cycle and should be available on a circuit-by-circuit basis. Additionally, the Commission should oppose capping the amount of credits available in any given month to the amount of that month's monthly recurring charge for the affected service. Such

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[26/] To the extent that incumbent LECs have regulatory flexibility to enter into off-tariff contractual arrangements for special access services, a failure by the incumbent LEC to include the same type of warranties at the request of the carrier customer should be considered *per se* bad faith negotiation.

caps do not adequately compensate carriers for repeated or chronic problems. The amount of compensation should be allowed to increase as the severity of the problem increases.

2. Reporting and Audit Requirements.

Effective enforcement also requires reporting and periodic, independent audits of the underlying data. The reporting dimensions must include incumbent LECs' performance with respect to the provision of special access services to CMRS carriers. Most of the special access metrics proposed have reporting dimensions or reporting structures at various levels of disaggregation. For example, the New York PSC's special services metrics require the incumbent to report on provisioning to its own retail customers, to the incumbents' affiliates in the aggregate, to all other carriers in the aggregate, and to each specific carrier customer.[27/] The Commission should clearly articulate that term "other carrier" includes unaffiliated CMRS carriers, with respect to both aggregate reporting and for individual carrier reporting. Finally, AWS supports separate reporting for the incumbent and for its affiliates, but urges the Commission to consider requiring separate reporting for any incumbent LEC wireless affiliate disaggregated from other incumbent LEC affiliates. This would enable AWS and other

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[27/] See, e.g., NY PSC Case 00-C-2051, Proceeding on Motion of the Commission to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York, Inc., Order Denying Petitions for Rehearing and Clarifying Applicability of Special Services Guidelines at Appendix 3 (Dec. 20, 2001). The New York PSC metrics for intrastate special services contains, with respect to certain of the metrics, the following "Report Dimensions:" Reporting Carrier Retail, Other Carrier Aggregate, Other Carrier Specific, Reporting Carrier Affiliates Aggregate." Similarly, Time Warner's proposed rules contain the following reporting dimensions: "SWBT Retail; Other Carrier Aggregate; Other Carrier Specific; SWBT Affiliates Aggregate." See Letter from A. Renee Callahan, Willkie Farr & Gallagher, to Magalie Roman Salas, Secretary, Federal Communications Commission (July 16, 2001) (submitted to CC Docket No. 96-98, Dec. 17, 2001).

CMRS carriers not affiliated with an incumbent LEC to ensure that the incumbent LEC does not provide preferential treatment for its wireless affiliate.

To ensure the integrity of the reporting process and the regulatory framework, underlying performance data must be subject to periodic audits by independent outside auditors (and this auditor should not be the incumbent LEC's regular outside auditor). Additionally, company-specific data must be made available to that company for inspection and review upon reasonable request.

3. The Commission Should Not Sunset Its Requirements.

The Commission seeks comment on whether the it should establish a sunset date on which the proposed reporting requirements would cease to apply. AWS urges the Commission to refrain from adopting a sunset requirement, either by adopting a date certain or establishing a triggering event. The Commission should not now attempt to blindly predict when special access services will be subject to sufficient competition to warrant reliance on market forces to discipline incumbent LEC behavior. Nor should the Commission, in the context of this proceeding, attempt to pre-define a triggering event that would somehow demonstrate the existence of sufficient competition. Clearly, the triggers for pricing flexibility are insufficient, for the reasons set forth above. Nor should a date based on the grant of 271 authority for BOCs be considered a sufficient triggering event. BOC provision of special access services has generally not been part of the state's or Commission's review of the extent to which the BOC has opened the local market for Section 271 purposes. Thus, the grant of Section 271 authority provides no basis to assess competition in the special access services market. Finally, there is no need for a specific sunset date. The Commission's biennial review process can be used to assess the continuing need for performance standards and reporting requirements.

III. CONCLUSION

For the reasons stated above, AWS strongly supports the adoption of national performance measurements and standards for incumbent LEC special access services. CMRS providers are highly reliant on these services and any performance regime adopted by the Commission must be fully-applicable to incumbent LEC special access services provided to CMRS providers.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Christopher Bjornson, do hereby certify that copies of the foregoing Comments of AT&T Wireless Services, Inc., were served on the following either electronically or by hand delivery* this 22nd day of January, 2002.

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