BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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
	)	
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
	)	
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

COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE

The Independent Telephone & Telecommunications Alliance ("ITTA") hereby submits its comments in response to the Commission's Notices of Proposed Rulemaking in connection with the Commission's performance standard-setting proceedings relating to Unbundled Network Elements ("UNEs") and Interconnection[1] and for Special Access Services[2] (hereinafter collectively, the "*Notices*")

I. INTRODUCTION

ITTA is an organization of midsize local exchange carriers. Many ITTA members operate both as incumbent local exchange carriers ("ILECs") and as competitive local exchange carriers ("CLECs"). ITTA members collectively serve over eight million access lines in over 40 states and offer a diversified range of services to their customers. ITTA's smallest member company serves just under 100,000 access lines, while its largest serves over two million. While most ITTA members are regulated by the Commission under rate-of-return regulation, several, such as Cincinnati Bell Telephone Company and Citizens Communications, have elected price cap regulation. Similarly, most members qualify as rural telephone companies within the meaning of Section 3(37) of the Communications Act of 1934 as amended ("Act").[3]

Midsize carriers have a range of interconnection obligations, which vary with size and with status as a rural carrier. In some cases, ITTA member carriers that qualify for the rural carrier exemption for the interconnection obligations of Section 251(c) have had that exemption terminated by state public utility commissions.

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[1] *Performance Measurements and Standards for Unbundled Network Elements and Interconnection, et al.*, CC Docket No. 01-318, Notice of Proposed Rulemaking, FCC 01-331 (rel. Nov. 19, 2001) ("*UNE Notice*").

[2] *Performance Measurements and Standards for Interstate Special Access Services, et al.*, CC Docket No. 01-321, Notice of Proposed Rulemaking, FCC 01-339 (rel. Nov. 19, 2001) ("*Special Access Notice*").

[3] 47 U.S.C. § 153(37).

II. THE COMMISSION SHOULD NOT IMPOSE PERFORMANCE MEASUREMENTS AND STANDARDS ON MIDSIZE AND SMALLER CARRIERS.

A. The Commission should continue to uphold the principle of size differentiation in both *Notices* and not impose such requirements on midsize and smaller carriers.

The central principle of size-based differentiation is increasingly becoming a core tenet of the Commission's rulemaking processes as they apply to local exchange carriers. Recognizing the limited resources and scope of midsize and smaller carriers, for example, the Commission determined in the *Phase 2 Accounting/ARMIS Review Order*, that its cost allocation manual filing requirements and many of its ARMIS reporting requirements should not apply to midsize carriers because the benefits to regulators, customers and competitors outweighed the burden such requirements imposed.[4] Similarly, in the *LEC Price Cap Order*, the Commission distinguished mandatory price cap LECs from voluntary price cap LECs, effectively differentiating the largest carriers from midsize carriers. That order expressly concluded, *e.g.,* that the cost of service quality reporting for smaller price cap LECs, which have limited resources, would outweigh any benefits and therefore did not require voluntary price cap LECs to file this data.[5]

Further, in a report on its strategic plan, the Commission stated as a specific policy goal, the "reduc[tion of] the burdens [associated with] filing, reporting, record keeping and accounting requirements across all telecommunications industries, *particularly for small companies*, where no longer necessary to further the public interest."[6] In an effort to promote efficiency within

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[4] *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, et al.,* Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, FCC 01-305, paras. 189, 194 (rel. Nov. 5, 2001) ("*Phase 2 Accounting/ARMIS Review Order"*).

[5] *Policy and Rules Concerning Rates for Dominant Carriers*, Second Report and Order in CC Docket No. 87-313, FCC 90-313, Erratum DA 90-1543, 5 FCC Rcd 6786 (rel. Oct. 4, 1990, cor. Oct. 31, 1990) ("*LEC Price Cap Order*"), modified on recon., FCC 91-115, Erratum DA 91-539, Erratum DA 91-544, 6 FCC Rcd 2637 (rel. Apr. 17, 1991, cor. Apr. 26, 1991, cor. Apr. 30, 1991).

[6] Federal Communications Commission, *Strategic Plan: A New FCC for the 21st Century*, 14 (rel. Aug. 1999) (emphasis added).

the agency, the Commission also indicated that it will "consider additional areas that may be appropriate for forbearance in accordance with Section 10 of the Act."[7] The Commission specifically noted that it had granted forbearance petitions of midsize local exchange carriers, exempting them from compliance with various entry, accounting, record keeping, and other requirements.[8]

More recently, the Commission employed size based distinctions in its creation of a three-tiered interstate access rate structure for price-cap carriers.[9] The tiered pricing plan implemented in the CALLS order provided for different rates for three sets of price cap carriers: (1) BOCs (including GTOCs), (2) midsize LECs, and (3) midsize rural LECs, using a combination of size-and density-based distinctions. In adopting this price structure for the then twelve price cap holding companies, the Commission concluded that a multi-tier target rate system reflected the reality of a diverse LEC population.[10] The Commission also recognized that midsize LECs by definition do not have the subscriber bases and resources of the larger carriers.[11]

The *Notices* appropriately raise the issue of disparate impact on different sized carriers and acknowledge that "the level of expense involved in generating performance measurements and statistical analyses"[12] could impact small, rural or midsize ILECs disproportionately. Specifically, the Commission "recognize[s] that the reporting obligations may

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[7] *Id.* at 11.

[8] *Id.* at 11-12.

[9] *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, Sixth Report and Order in Docket Nos. 96-262 and 94-1, 15 FCC Rcd 12962, para. 162 (2000) (*"CALLS Order"*).

[10] *Id.* at para. 177.

[11] *Id.*

[12] *UNE Notice at para. 24; Special Access Notice* at para. 15.

require incumbent LECs to modify existing computer systems to collect the necessary data."[13] Further, in the *UNE Notice*, the Commission requests "commenters to address whether any requirement . . . would impose particular costs or burdens on small, rural, or midsized incumbent LECs . . . and how the rules should be modified to take into account any particular concerns of these incumbent LECs . . . [and] the unique characteristics of the areas" they serve.[14] Similarly, in the *Special Access Notice*, the Commission requests "commenters to address whether performance measurements and standards for special access provisioning would impose disproportionate costs or burdens on small, rural, or midsized incumbent LECs."[15] As indicated in sections II.C. and II.D. below, imposing such a requirement on midsize and smaller LECs would burden these carriers disproportionately. ITTA commends the *Notices'* sensitivity to midsize and smaller carriers' concerns and encourages the Commission use these proceedings to continue to move away from "one-size-fits-all" uniform industry-wide policies.

B. Congress has endorsed the principle of size-based differentiation between classes of carriers.

Congress has also recognized the principle of size-based differentiation between classes of carriers in a variety of contexts. For instance, in enacting the Telecommunications Act of 1996, Congress explicitly endorsed differentiation of two percent carriers as a class of carriers entitled to additional regulatory relief.[16] More recently, in both the 106th and 107th Congresses, the U.S. House of Representatives passed legislation that differentiated midsize and smaller carriers by granting relief from a series of regulatory requirements as they applied to two percent carriers. The House found that existing regulations concerning ILECs are "typically tailored to the circumstances

[13] *UNE Notice* at para. 24.

[14] *Id.*

[15] *Special Access Notice* at para. 15.

[16] 47 U.S.C. § 251(f)(2).

of larger carriers and therefore often impose disproportionate burdens on two percent carriers."[17] This legislation would explicitly require the Commission to evaluate separately the burden any proposed regulatory, compliance or reporting requirements would have on two percent carriers.[18]

C. The performance standards the Commission proposes would be inappropriate for to midsize and smaller carriers.

1. To date, performance standards have been imposed only on larger carriers in carefully delineated circumstances.

Historically, performance standards such as those proposed in the *Notices* have been applied exclusively to the larger carriers. Most often, these standards have been used to measure Bell Operating Company applications under Section 271 for authority to provide interLATA services.[19] These performance measurements and standards have also been imposed in the context of large ILEC mergers.[20] On the other hand, neither the Commission nor the states have imposed such standards on midsize and smaller carriers.

2. Midsize carriers cannot easily provide the types of measurements the Commission proposes.

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[17] H.R. 3850, 106th Cong., § 2(a)(4) (2000); H.R. 496, 107th Cong., § 2(a)(4) (2001). This legislation has also been introduced in the U.S. Senate as S. 1359, 107th Cong. (2001).

[18] H.R. 3850 at § 4; H.R. 496 at §4.

[19] *See* 47 U.S.C. § 271(c)(2). *See also*, *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)*; 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).

[20] *See, e.g., GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License,* Memorandum Opinion and Order, 15 FCC Rcd 15,032 (2000); *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 10 of the Commission's Rules,* Memorandum Opinion and Order, 14 FCC Rcd 14,712 (1999).

The performance measurements and standards the Commission proposes presume the existence of automated OSS systems, the cost of which, as a general matter, have not been justified for midsize and smaller carriers. Midsize carriers generally have not been required to provision as large a volume of UNEs or special access arrangements as their larger counterparts have. Manual processes for tracking and executing these orders have proven effective and adequate to ensure rapid and efficient provisioning of these services. As a result, there has been no need for complex OSS systems for the small order volumes midsize carriers generally face.

Midsize and smaller carrier processes, however, cannot easily be modified to track and compile the type of detailed performance data the Commission proposes to collect in the *Notices*.[21] Thus, midsize carriers would be required to undertake a costly and extensive overhaul of these systems in order to be capable of providing the types of measurements the Commission proposes.

ITTA members have more limited resources than larger carriers with which to track provisioning intervals, upgrade OSS mechanisms and implement measurement systems. Larger carriers have in many cases already made significant investments necessary to upgrade their OSS to track and report such data, largely as a function of the 271 approval process. Given the large investment that midsize and smaller ILECs would need to make, the cost of compliance with these standards will be disproportionately greater for these carriers than the cost of the same standards imposed on large carriers. Moreover, the burdens associated with these standards do not fall solely on the ILEC. Because many midsize and smaller carriers are subject to rate-of-return regulation, an increase in costs arising from compliance with the proposed performance standards will ultimately be passed on as higher costs to end-user carriers and customers.

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[21] *See UNE Notice* at para. 25; *Special Access Notice* at para. 16.

3. *Because the Commission is not planning to preempt inconsistent state standards, federal performance standards will increase the regulatory burden.*

The *Notices* appear unduly confident about the deregulatory impact of imposing a new set of performance measurements and standards. While the Commission purports to seek ways to reduce the overall regulatory burden in these proceedings,[22] the true effect of performance standards would be to *increase* the regulatory burden on midsize and smaller carriers. While the Commission, for example, seeks comment on how federal UNE performance standards might "harmonize[] and potentially streamline[]" state performance requirements, the Commission proposes no affirmative steps to preempt inconsistent state regulations.[23] To the contrary, the Commission expresses its belief that "jurisdictional differences among the core measures and standards could fall away over time," without proposing any particular means by which it could ensure such unification. In place of such proposals, the Commission offers its bare hope that states "*could* adopt requirements that closely track or at least are consistent with the national requirements,"[24] or "*could* . . . modify those requirements to make them more consistent with the national requirements."[25] In the *Special Access Notice*, the Commission specifically seeks comment on the "extent to which the state commissions could play a role regarding interstate special access services," specifically noting the states' authority to regulate intrastate special access services.[26]

Without a more forceful effort to secure state action to unite around the national standard, the Commission will fail to realize its stated goal to reduce the overall regulatory burden. Rather, as the Commission candidly recognizes, "[s]hould this harmonization not occur . . . ,

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[22] *UNE Notice* at paras. 15-20; *Special Access Notice* at paras. 19-20 (sunset).

[23] *UNE Notice* at para. 17.

[24] *Id.* (emphasis added).
[25] *Id.* (emphasis added).

[26] *Special Access Notice* at para. 11.

adoption of national measurements and standards could merely increase the overall reporting burden on incumbent LECs."[27] In ITTA's view, this increase would inevitably result from the Commission's adoption of national performance standards. States could take years to revise existing performance standards, with no guarantee that they would coalesce around the federal standards. In the interim, two sets of potentially inconsistent standards would increase administrative compliance burdens and would complicate the negotiation of interconnection agreements as the parties may disagree as to which set of requirements should govern.

4. Proposing new national performance standards creates additional regulatory uncertainty for midsize and smaller LECs.

The issue of performance standards and measurements is a settled area for midsize and smaller LECs. Today, the market governs performance standards. There are no state or federal mandates. For midsize and smaller carriers, these standards are established through contractual negotiation and are either contained in interconnection agreements or, in the case of special access, are generally performed informally upon request by carriers. There is no evidence that this market is failing to provide mutually acceptable solutions to midsize and smaller carriers and their carrier-customers.

"One-size-fits-all" standards based largely on RBOC experience risk upending these relatively settled relationships and thus create a new dimension of regulatory uncertainty. To the contrary, this market is functioning properly. Further, by continually revisiting interconnection rules that have become increasingly well-settled since 1996, the Commission is creating uncertainty and regulatory "churn" that raise transaction and administrative costs for all parties.

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[27] *Id.*

5. *The benefits of imposing performance standards on midsize and smaller carriers would be* de minimis.

Finally, while the burdens associated with compliance will be disproportionately great for small and midsize carriers, associated benefits will be relatively small. Midsize and small ILECs generally provide a relatively small volume of UNEs and special access. It would be difficult to contend that such insignificant benefits would justify the significant costs that such performance standards would entail. Additionally, any value that these standards may have for the Commission's legitimate enforcement purposes are already being met through privately negotiated standards between carriers.

D. There is no systemic problem in midsize and smaller carriers' provisioning of special access or UNEs.

Beyond the fact that tracking and reporting performance under any set of mandatory standards would be extraordinarily costly, the Commission has yet to be presented with evidence of a systemic problem with the provisioning of UNEs or special access services by midsize and smaller carriers.[28] As reflected in the *Notices*, the performance debate simply has not involved midsize and smaller ILECs.[29] This is also the case in the related proceedings that the *Notices* incorporate by reference. As regards midsize and smaller carriers, this would appear to be a textbook case of a solution in search of a problem. In fact, the *Notices* provide an ideal opportunity for the Commission to adopt the type of enforcement posture referenced on numerous occasions by

[28] *See, e.g., AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies Needed to Ensure Compliance by ILECs with their Statutory Obligations Regarding the Provision of Interstate Special Access Services,* RM 10329 (filed Oct. 30, 2001) (complaining of alleged provisioning difficulties involving Verizon and U S West); Letter from Daniel Gonzalez, XO, to Magalie Roman Salas, Secretary, Federal Communications Commission (filed August 24, 2001) (complaining of allegedly inadequate provisioning practices used by Verizon, SBC and Qwest).

[29] In fact, the performance debate has focused almost exclusively to date on the needs of the BOCs and their IXC and CLEC customers. Both the Special Access and UNE Notices cite evidence from CLECs and IXCs challenging the adequacy of BOC performance. *See Special Access Notice* at n. 3; *UNE Notice* at n. 9.

Chairman Powell instead of developing another set of prophylactic rules that are likely to have little, if any, practical effect.

III. CONCLUSION

ITTA urges the Commission to continue to recognize the diversity within the ILEC community by not imposing performance measurements and standards on midsize and smaller carriers in either the *UNE Notice* or the *Special Access Notice* proceedings. Neither notice demonstrates a need to extend to midsize and smaller carriers performance requirements designed for the largest carriers. Both *Notices* acknowledge the disparate burdens such a mandate would impose on midsize and smaller carriers.

Respectfully submitted,

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