**Before the**
**Federal Communications Commission**
**Washington DC 20554**

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| In the Matter of | ) | |
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| Performance Measurements and Standards for Unbundled Network Elements and Interconnection | ) | CC Docket No. 01-318 |
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| 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 COVAD COMMUNICATIONS COMPANY**

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## Introduction

Covad Communications Company (Covad), by its attorney, hereby respectfully submits comments in support of the Notice of Proposed Rulemaking (Notice) seeking to adopt federal performance measures and standards and associated penalties to foster compliance with the market-opening provisions of section 251 of the Telecommunications Act of 1996 (1996 Act).[1] As the largest national provider of broadband services using digital subscriber line (DSL) technology, Covad is uniquely positioned to offer evidentiary support for the need to adopt clear, enforceable national rules requiring unbundled network elements (UNEs) and collocation to be provisioned in a timely and quality manner. For example, Covad is one of the largest, if not the largest, user of standalone[2] unbundled loops and linesharing UNEs in the nation. With over 350,000 customers, Covad has experience ordering hundreds of thousand of UNEs from all of the Bell Operating Companies.[3]

Because the services that Covad seeks to offer via those UNEs compete directly with the retail service offerings of the Bell companies that are required by law to make those UNEs available, Covad has also experienced rampant anticompetitive provisioning

[1] The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).
[2] Non UNE-P loops, e.g.
[3] Covad's comments address the legal and policy questions raised in the notice, and also propose specific performance metrics. Those performance metrics address the particular measures, business rules, and standards necessary to ensure nondiscriminatory UNE provisioning to Covad. Covad understands that Worldcom has undertaken a comprehensive and detailed metric analysis, including input from across the competitive LEC sector, and is proposing metrics to the Commission as a result of that effort. Covad applauds Worldcom's thorough undertaking and, to the extent they are consistent with metrics proposed by Covad, supports Worldcom's submission to the Commission. In particular, Covad supports the metrics proposed by Worldcom that address collocation, interconnection, billing, and other areas of competitive significance not addressed in Covad's proposed metrics. Because the provisioning of DSL-compatible loops and linesharing UNEs poses specific problems for Covad, Covad is submitting its own metrics to the Commission in order to provide a basis for adoption of metrics that address those problems. Covad's proposed metrics do not address any issues other than UNE loops and linesharing, and thus Covad endorses and supports Worldcom's metrics to the extent they address other metric categories. The Commission is well aware of the particular discrimination incumbent LECs have demonstrated against providers of DSL-

practices of the incumbent phone companies. Because the incumbents have both the incentive and ability to impede Covad's service offerings, and because that incentive and ability will not change until the incumbent LECs are structurally separated, only the regulatory process can ensure that incumbent LECs provide bottleneck network elements in a timely manner. This proceeding thus marks the next chapter in the process of unbundling the nation's embedded monopoly telecommunications network: ensuring that such unbundling is undertaken in a reasonable, timely, and quality manner.

This proceeding is not concerned with the question of the necessity of unbundled last mile connectivity to competitive entry. Indeed, in the very first paragraph of its Notice, the Commission states that it is seeking comments on measures that would attach to those network elements 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."[4] As the Commission correctly points out in the Notice, the 1996 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."[5] There is no question that incumbent LECs do not have incentive to voluntarily cede market share to competitors – the regulatory process must impose such obligations. Because of the incentive and ability of the incumbent monopolists to "interpret" those obligations in such a way as to thwart competitive entry, the Commission has always been forced to delineate those obligations with great specificity (often repetitively). In other words, the

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based services, given the incumbent carriers' ability and incentive to take anticompetitive action to shore up their own retail DSL offerings.

[4] NPRM at ¶ 1.

[5] NPRM at ¶ 2.

Commission merely stating an obligation to unbundle is not, of itself, sufficient to fulfill Congress' mandate to the Commission to "promote competition." More importantly it is insufficient to satisfy the Commission's affirmative statutory duty to "encourage the deployment" of broadband services.[6]

Recently released FCC statistics on the nationwide deployment of broadband service reveal two very clear trends – one good, and one bad.[7] On the good side, it is clear that deployment of broadband services in the U.S. is exploding. The Commission found, based on carrier submissions of data, that high-speed ADSL service deployment grew by an amazing 435% in the year 2000.[8] Further, the deployment is geographically more widespread than ever. Consumers in 97% of the most densely populated zip codes have access to broadband services, which is not particularly surprising. What is more surprising is that the percentage of consumers in the lowest-density population centers (measured by zip code) in the U.S. who had access to broadband services *doubled* in the year 2000. In sum, broadband services are not only expanding in numbers, they are expanding geographically as well, ensuring that consumers in even the most rural parts of the country will soon enjoy ubiquitously available broadband service.

The good news, therefore, is that broadband services are widely deployed across the country, particularly services deployed over the telephone network. The bad news, however, is that the promise of the 1996 Act – that such services would be deployed by a

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[6] Section 706 of the Telecommunications Act of 1996 provides, in pertinent part: "The Commission shall . . . encourage the deployment on a reasonable any timely basis of advanced telecommunications capability to all Americans . . . ." 47 U.S.C. § 157 nt.

[7] *See* "Federal Communications Commission Releases Data On High-Speed Services For Internet Access," CCB/IAD Report released Aug. 9, 2001, available at http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0801.pdf.

[8] Interestingly, the rate of growth of ADSL services (up 108%) in the second have of last year was nearly twice that of cable modem services (up 57%). For the full year, ADSL deployment was up a whopping 453%, whereas cable modem services were up only 153%.

wide variety of competitors – has not been realized. In fact, recent news events on the death of CLECs suggest that these overall deployment trends may soon start a rapid decline. At the end of 2000, incumbent telephone companies had a virtual monopoly on that broadband deployment. Indeed, the Commission found that the four Bell Operating Companies – SBC, Verizon, BellSouth, and Qwest – controlled over 86% of ADSL deployment. Adding in the non-BOC incumbent LECs, the Commission found that incumbent phone companies have control of over 92% of all ADSL deployment. Less than 8% of ADSL deployment belongs to competitive service providers. With only 8% broadband penetration by competitors, the Commission should be concerned that the 1996 Act is not working as advertised.

The significance of this disparity in numbers is twofold. First, it puts a new gloss on the perpetual Bell Operating Company claims that only a combination of regulatory relief and legislative override of the core market-opening provisions of the 1996 Act can give the BOCs a fighting chance in the broadband marketplace. At its most basic, the BOCs' argument is that they are handicapped by their unbundling obligations and have no hopes of deploying broadband services so long as such limitations on their deployment capabilities remain in force. Importantly, they never demonstrate exactly how their ability to deploy services is handicapped, preferring to rely on rhetoric and red herring arguments to make their case for "deregulation." Indeed, they cannot base their arguments on substance – when these four companies, with a combined 92% market share, claim they are impeded in their ability to deploy service, any informed policymaker should see through the smoke and mirrors to the real agenda.

Second, it should be clear by now that the Bell companies love being monopolies, but they hate their unbundling obligations. Regardless of the economic rationality of the BOCs' decision to fight competitive entry in every available venue, the significance of this universal BOC policy of blocking competition is having a predictable effect. Where once there were three nationwide DSL CLECs, now there is only one. Where once there were dozens of smaller, regionally focused DSL CLECs, now such carriers number in the low single digits. If there is such an explosion in demand for broadband services, why have most of the DSL CLECs closed their doors? And more importantly, what must the FCC do to ensure that the 92% BOC control of the ADSL market goes down, and not up?

As the nation's leading provider of broadband services using digital subscriber line (DSL) technology, Covad is among the largest users of standalone unbundled local loops and linesharing in the nation. In the five years since Congress opened the local telecommunications market to competition, the UNE provisioning practices of incumbent LECs have stood as the single greatest impediment to the deployment of competitive broadband services to consumers. Because of the lack of specific, enforceable federal rules requiring incumbent LECs to provision functioning UNEs to requesting carriers in a timely manner, incumbents have been given a six year free pass to deny, delay, and degrade the UNEs they provide to competitive LECs. A UNE provisioned a month late is no better than a UNE never provisioned at all. No customer is going to await service for so long, especially when another option – retail broadband service from the very same incumbent LEC that denied a timely wholesale UNE – is usually available in a matter of days.

Six years after passage of the Act, incumbent LECs have universally refused to embrace competition. Incumbent LECs have chosen to treat competitive LECs not as the "valuable wholesale customers" they claim (when looking for regulatory favoritism), but rather as retail competitors who can be suppressed with consistent discrimination in the provision of wholesale services. The litany of court challenges, regulatory obstacles, and legislative initiatives aimed at undoing the central market-opening provisions of the Act are too numerous to recount in full here.[9] It is sufficient to note the fundamental economic reality that incumbent LECs have the clear incentive, and even clearer ability, to suppress competition by denying loops entirely, delaying them when outright denial does not work, and degrading the loops' condition when simple delay fails to cause the competitor to lose a customer.

When the Commission first adopted its loop unbundling rules in 1996, it did not adopt specific provisioning intervals, but rather noted that "it is vital that we reexamine our rules over time in order to reflect developments in the dynamic telecommunications industry."[10] Six years later, the most significant barrier to competitive entry is the UNE provisioning practice of incumbent LECs. Nearly two years ago, ALTS filed a petition asking the Commission to adopt, among other things, loop and linesharing provisioning intervals. That petition, followed by the Commission's Notice issued in December, gives the Commission an opportunity to honor its commitment to reexamine its rules to see what competitive barriers can and should be lifted.

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[9] A tiny sampling: Southwestern Bell v. FCC et al., 168 F.3d 1344 (D.C. Cir. 1999) (seeking to overturn orders regulating rates and conditions for physical collocation); Southwestern Bell Telephone et al. v. FCC et al, 153 F.3d 597 (8th Cir.1998) (challenging shared transport as a UNE); BellSouth v. FCC et al., 144 F.3D 58 (D.C. Cir. 1998) (claiming § 274 of the Act is a bill of attainder); BellSouth v. FCC et al, 162 f.3d 678 (D.C. Cir. 1998) (claiming § 271 is a bill of attainder); SBC v FCC, 981 F. Supp. 996 (N.D. Tex. 1997) (claiming § 271 is a bill of attainder); USTA v. FCC, 00-1012 (D.C. Cir.) (challenging adoption of line sharing UNE).

This Commission is at a crossroads in its efforts to open the local market to effective competition. Once again, the competitive community is before the Commission, highlighting the most egregious barriers to entry that remain, and asking the Commission to take a few, simple steps to remove those barriers. Competitive LECs are not asking for a litany of new rules, nor are competitors asking for the Commission to in any way handicap the ability to incumbent phone companies to continue to deploy broadband services at whatever rate they choose.

Covad respectfully submit that granting the ALTS petition and establishing the UNE provisioning intervals advocated therein is the only way the Commission can protect consumers' ability to secure the widest possible range of competitive broadband services. The very serious problems associated with loop and linesharing provisioning should not be swept under the rug or hidden away in the attic—the Commission must address them fully, openly and aggressively. If the Commission fails to preserve the ability of competitive LECs to secure timely and reasonable access to loops, the Commission risks the eventual loss of an entire industry of competitive providers. All that will be left in the DSL world will be the incumbent LECs, who will have won their battle to crush competition and regain their longstanding monopolies.

As it stands today, competitive LECs have been without an effective remedy for the discriminatory UNE practices of incumbent LECs. The obligation on incumbents to provide unbundled access to loops and linesharing UNEs capable of supporting xDSL services has been in place since 1996, but incumbent LECs have devised numerous measures to handicap competitive LECs in their quest to secure the UNEs to which they are entitled by law. Despite the fact that federal rules have been on the books for over

[10] *Local Competition First Report and Order* at ¶ 58.

five years, enforcement of those rules has been mired in the minutiae of court challenges, political fights, and bureaucratic handwringing. It is time to put in place UNE provisioning rules that will make the ILECs' obligations abundantly clear to ILECs, CLECs, and regulatory authorities.

The most pervasive ILEC maneuver around the current federal rules is the timeliness of UNE provisioning.[11] Without a federal rule requiring incumbent LECs to provide a loop in a certain, predictable period of time, competitive LEC are severely hampered in their efforts to compete effectively in the broadband marketplace. A loop provisioning interval will accomplish numerous goals vital to the protection of the competitive broadband industry.

**The Commission has authority to adopt national performance metrics and benchmarks.**

As the Commission properly concluded in the *Notice*, the Commission's authority to adopt national UNE performance metrics and measures "is clear."[12] The Commission's authority derives from numerous statutory provisions and general agency discretion. In the statute, 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

[11] The clearest evidence of the dysfunction in the Commission's UNE enforcement process is that incumbent LECs support it. For example, in comments filed in opposition to the ALTS loop petition, GTE (now Verizon), argued that allegations of anticompetitive loop provisioning practices "are best dealt with through the complaint process." GTE Comments at 3. SBC stated in its comments that "the proper remedy is a complaint with the state commission or the FCC." SBC Comments at 24. Why are the BOCs unanimous in their preference for existing rules and procedures? Because those procedures virtually guarantee, based on a five year, zero-enforcement record of the FCC, that the BOCs will never face any penalty for their discriminatory UNE practices.

[12] NPRM at ¶ 14.

nondiscriminatory."[13] A court reviewing the Commission's definitions of "just, reasonable and nondiscriminatory" will grant "substantial deference to the agency's interpretation of the statute because 'the reasonableness for assessing the wisdom of …policy choices and resolving the struggle between competing views of the public interest are not judicial ones, and because of the agency's greater familiarity of the with the ever changing facts and circumstances surrounding the subjects regulated.'"[14] As such, the Commission is free to enact specific rules interpreting the "just, reasonable, and nondiscriminatory" language of section 251(c)(3) as requiring incumbent LECs to provision UNEs in a certain number days, and at a certain level of quality.[15]

The Commission's general statutory authority, sections 201 and 202 of the Act, also provides statutory support for the Commission's actions in this proceeding. Specifically, section 201(b) of the Act provides that "[t]he Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this Act."[16] As the Supreme Court has held, section 201(b) extends the Commission's rulemaking authority to "to implementation of the local-competition provisions" of the 1996 Act.[17] Indeed, the Supreme Court bluntly concluded: "We think that the grant in 201(b) means what it says: the FCC has rulemaking authority to carry out the "provisions of this Act," which include §§ 251 and 252, added by the Telecommunications Act of 1996."[18] Thus, the Commission clearly possesses adequate statutory authority to adopt rules defining the exact parameters of the incumbent LECs'

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[13] 47 U.S.C. § 251(c)(2), (c)(3), (c)(6).
[14] *AT&T et al v. FCC*, 220 F.3D 607, 621 (D.C. Circuit 2000) (*quoting FDA et al v. Brown and Williamson*, 529 U.S. 120, 132 (2000)).
[15] *See, e.g.*, *AT&T et. al v. Iowa Utilities Board*, 220 F.3d 607 (D.C. Cir. 2000) (FCC has broad authority to interpret the requirements of the market-opening provisions of the 1996 Act).
[16] 47 U.S.C. § 201(b).
[17] *AT&T et al v. Iowa Utilities*, 119 S.Ct. 721, 729 (1999).

obligation to provide UNEs pursuant to "just, reasonable, and nondiscriminatory" terms and conditions.

Finally, section 706 of the 1996 Act requires the Commission to act affirmatively to promote the deployment of broadband services. Specifically, section 706 requires the Commission to "encourage the deployment on a reasonable any timely basis of advanced telecommunications capability to all Americans . . . ."[19] Given the Commission's longstanding recognition that competition, not monopoly, is the best means of ensuring that consumers have access to the widest possible variety of innovative broadband services, the Commission is under a statutory obligation to promote the availability of competitive broadband services.

**The Commission has already set forth the proper procedural groundwork for the adoption of national performance metrics and measurements.**

The Commission need not look far for the procedural backdrop for the adoption of federal provisioning intervals. As far back as 1997, the Commission noted the need for federal benchmarks related to section 251(c)(3) unbundling obligations. Specifically, in its *Performance Metrics NPRM*, the Commission tentatively concluded that it should "adopt model performance measures and reporting requirements" – including several new performance measures for unbundled loops.[20] In early 2000, the Commission sought and received extensive comment on the ALTS petition for adoption of federal provisioning

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[18] *AT&T et al v Iowa Utilities*, 119 S.Ct. 721, 730 (1999).
[19] 47 U.S.C. § 157 nt.
[20] *Performance Measures NPRM* at ¶¶ 50, 57. "Although we believe that it is appropriate to consider how performance standards might be used, we tentatively conclude that it is premature at this time for us to propose specific standards. We understand that several states are considering performance standards and encourage states in these efforts. Nevertheless, we do not believe that we have developed a sufficient record to consider proposing performance standards at this time." *Performance Measures NPRM* at ¶ 125. Thus, the Commission did not adopt performance measures at that time because it wanted a fuller record on the subject.

intervals, and every commenting party – with the exception of the four Bell companies – strongly encouraged the Commission to adopt performance benchmarks. In addition, the Commission has always reserved the right to impose additional, more detailed provisioning rules "in order to reflect developments in the dynamic telecommunications industry."[21] The developments in the competitive LEC industry have not been positive, and the Commission now has the record before it to support the UNE performance metrics and measures that would deny incumbent phone companies the ability to squelch out the remaining competitors.

**Adoption of national UNE metrics and measurements is the most procompetitive, simplest step to preserving and promoting broadband competition.**

The absence of a provisioning interval is a gaping hole in the Commission's otherwise pro-competitive loop rules. No amount of reconsiderations, reassertions, and restatements of the fundamental principles of UNE provisioning (all of which the Commission has undertaken on numerous occasions) can overcome one simple fact: taking a long time to provision a loop is the easiest and safest way for an incumbent LEC to stifle competition. It is easy because it requires only the passage of time, and no other effort, to successfully prevent competitive LECs from turning up service to a customer. It is safe because in the absence of a federal provisioning rule, incumbent LECs are effectively insulated from any FCC enforcement action.

By adopting a national provisioning rule, the Commission will provide, for the first time, a clear benchmark that will provide competitive LECs an enforceable remedy

[21] *Local Competition First Report and Order* at ¶ 59 ("We recognize that it is vital that we reexamine our rules over time in order to reflect developments in the dynamic telecommunications industry. We cannot anticipate all of the changes that will occur as a result of technological advancements, competitive

for discriminatory UNE provisioning practices. Covad has experienced consistent, anticompetitive delays in UNE provisioning from all incumbent LECs from which it have ordered unbundled loops. Despite the serious harm to competition and consumers, Covad have been unable to secure an effective regulatory remedy for these anticompetitive practices. The Commission has thus far been hesitant to exercise its Title II authority to pursue enforcement action against incumbent LECs for UNE practices, most likely because of the absence of a clear rule that would facilitate such enforcement. At the state level, the vast majority of states do not have rules regarding provisioning intervals, and an even greater number of states lack the resources to conduct enforcement proceedings. As such, in order to obtain effective loop provisioning remedies across the country, Covad would first have to win the implementation of a state provisioning rule, and then pursue an enforcement action, in every jurisdiction in the country. These very obstacles to effective competition have already led the Commission to conclude that only concrete national rules could protect and promote competitive entry: as the Commission first concluded in 1996, "national rules will reduce the need for competitors to revisit the same issue in 51 different jurisdictions, thereby reducing administrative burdens and litigation for new entrants and incumbents."[22]

National UNE delivery intervals will also facilitate enforcement of interconnection agreements through private litigation and arbitration—because a national benchmark should facilitate the writing of clear interconnection agreements. As the Commission recognized in the *First Local Competition Order*, interconnection negotiations between a competitive LEC and an incumbent LEC are characterized by

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developments, and practical experience, particularly at the state level. Therefore, ongoing review of our rules is inevitable.").

disparate bargaining power—the incumbent LEC has a tremendous incentive to deny requests for interconnection, to delay the establishment of agreements, and to deftly draft agreement clauses that obfuscate and obliterate a competitive LEC's legal rights. Clear and precise UNE installation rules — rather than the always-shifting sands of "parity"— will provide a clear baseline of what a competitive LEC is entitled to receive from an incumbent LEC.

**National UNE performance metrics and measurements will end the "battle of the data" in the 40+ remaining section 271 applications**

As evidenced by the Commission's decisions in all recent long distance proceedings, there is a great deal of uncertainty surrounding the issue of UNE provisioning performance by incumbent LECs for purposes of checklist compliance. Covad is forced to present a large volume of UNE data to the Commission in section 271 proceedings, which often results in the Commission being unable to resolve the data presented and noting that it was troubled by the lack of a definitive measure of UNE performance criteria.[23] Such difficulty is understandable, because in the absence of concrete rules, the Commission is left trying to determine if a loop that is three days late, or five days late, or a month late, is a violation of the incumbent LEC's section 251(c)(3) obligations. UNE provisioning intervals codified as federal rules wipe that problem away. By establishing concrete intervals, and ensuring that the parameters of those intervals are defined concretely, the Commission will eliminate the "battle of the data" and resolve much more efficiently the question of UNE checklist compliance.

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[22] *Local Competition First Report and Order* at ¶ 56.

[23] "The need for unambiguous performance standards and measures has been reinforced by the disputes in the record regarding, for instance, what performance is being measured and whether it is properly captured by particular measures." *Bell Atlantic New York Section 271 Order*, FCC 99-404, at ¶ 334.

As the Commission concluded in the *Local Competition First Report and Order*, concrete and specific national unbundling rules "help the states, the DOJ, and the FCC carry out their responsibilities under section 271, and assist BOCs in determining what steps must be taken to meet the requirements of [the] competitive checklist."[24] This is of particular importance as more BOCs file section 271 applications, and the time and resources of the Commission are severely strained by the sheer volume of such applications. There is no question that the Commission will at some point in the very near future be virtually flooded with section 271 applications, and that UNE provisioning issues will be of paramount importance (as they have been in the applications received thus far). The Commission has already concluded that national rules establishing the concrete and specific standards of UNE unbundling pursuant to section 251(c)(3) of the Act provide the Commission "the standards to apply in adjudicating section 271 petitions in an extremely compressed time frame."[25] The severely compressed time frame that the Commission predicted in 1996 will soon be a reality as multiple applications pour in. The Commission has before it today an opportunity to reduce the burden on the parties – both incumbents and competitors – as well as the state commissions, the DOJ, and the Commission itself, by ensuring that all parties to a section 271 proceeding are working from the same concrete and definite UNE provisioning rules. For example, a federal rule that states unambiguously that unbundled local loops must be provisioned in three business days – rather than the current amorphous "nondiscriminatory loop provisioning" – will streamline the section 271 process to the benefit of all parties concerned.

[24] *Local Competition First Report and Order* at ¶ 57.
[25] *Local Competition First Report and Order* at ¶ 57.

In order to end the "he said-she said" evidentiary battles in the dozens of section 271 applications still to come, the Commission need only adopt a benchmark for loop provisioning of three business days (and one business day for the line-sharing UNE) and bring an end to the retail analogue mess.[26] The Commission's current system places the burden perversely on the competitive LEC to prove that the incumbent is not acting in an anticompetitive manner by providing data showing that the incumbent's provisioning intervals are out of "parity" with the service the incumbent provides its own customers. Imposing such a burden on competitive LECs is a strange twist on the traditional placement of an evidentiary burden on the party that actually possesses all of the necessary information. Despite the fact that it is the incumbent, not the competitive LEC, who has all information related both to the competitive LEC UNE orders (when UNEs were ordered and when provisioned) and the incumbent's own retail performance, the burdens of proof and persuasion are placed on the competitive LEC – the party without access to the information – to prove the incumbent's noncompliance. This twisted system – contrary to long-standing common law principles – immunizes incumbent LECs from an effective section 271 checklist challenge and from effective enforcement action, because the incumbent need only claim that retail performance data is irrelevant, confidential, or unavailable to foreclose the competitive LEC from meeting its burden of proof.[27]

The burden should not be on the competitive LEC, and the Commission must recognize how unworkable the section 271 and enforcement contexts have become in the

[26] *See infra* for a more detailed discussion of these proposed intervals.
[27] This system also has the perverse effect of giving incumbent LECs the incentive to maintain poor quality service to their own retail customers in order to reduce their burden of performance to their wholesale customers. The shorter the incumbent LEC's retail interval, the shorter its wholesale interval must be.

absence of concrete UNE rules. All parties will benefit from the adoption of such rules. The Commission will benefit by facilitating the section 271 review process and enforcement proceedings. Incumbent LECs will benefit by having a clear and definite benchmark by which to provide UNEs and measure their own performance. Competitive LECs will benefit by gaining access to UNEs in a timely manner, having the section 271 checklist compliance burden of proof properly placed on the incumbents, and accessing an effective and workable enforcement mechanism to remedy anticompetitive incumbent LEC UNE practices. Finally, and most importantly, consumers will benefit from timely access to the widest possible variety of innovative advanced services.

**There are no differences among states or incumbent LECs that would prevent the Commission from adopting national UNE metrics and measurements.**

In their zeal to avoid the destruction of their favorite tool of discrimination, incumbent LECs will likely argue – as they do in opposition to every federal rule – that there are regional differences in UNEs that would make federal provisioning intervals unworkable. Covad submits that, in its experience ordering and utilizing loops from every single large incumbent LEC in the country (experience that no incumbent LEC can claim), there is not a single difference in loops over geographies and incumbents that could possibly interfere with the establishment of a national loop installation rule. As detailed below, Covad agrees that loop provisioning intervals should vary slightly when conditioning work is necessary, but the conditioning that must be performed on a loop with load coils and bridged taps is the same in Verizon's region as it is in BellSouth's. Incumbent LECs have an incentive to exaggerate the regional differences of loop

provisioning processes, because fighting implementation of a concrete and specific federal rule is the only means of preserving their favorite discriminatory tool.

Although it is certainly true that some state commissions have adopted UNE provisioning intervals, the fact remains that the overwhelming majority of state commissions have not done so, and those that have done so have put different standards in place. As a practical matter, the policies of the different states – ranging from very pro-competitive intervals to no intervals at all – make service offerings extremely difficult for national providers like Covad. As a result of the lack of federal rules, Covad's quality of service varies on a state-by-state, ILEC-by-ILEC basis to take account of the widely different provisioning intervals put in place across different states. For example, the vast majority of Covad's sales are through large, national ISPs that operate in multiple states, and Covad's sales are undertaken pursuant to national or regional contracts that cover those states. Because of the crazy-quilt lack of minimum national standards, Covad cannot, in its customer contracts, provide concrete expectations of uniform, national installation intervals or timeliness. This significantly impairs Covad's ability to sell its services and maintain a national, uniform expectation of service quality—which customers expect.

Establishment of minimum UNE installation intervals is fully consistent with the Commission's approach to its unbundling rules since the 1996 Act was passed. As the Commission noted in 1996 in the *First Local Competition Report and Order*, the adoption of uniform national unbundling rules is particularly pro-competitive, because it reduces "the likelihood of potentially inconsistent determinations by state commissions" and thus reduces "burdens on new entrants that seek to provide service on a regional or

national basis by limiting their need for separate network configurations and marketing strategies, and by increasing predictability."[28] The Commission recognized that state commissions have an important role in adopting rules that "take into account local concerns," but in the case of UNE provisioning intervals, there are no such concerns.[29] With regard to xDSL-capable loops in particular, it is indeed entirely within the Commission's authority and responsibilities to ensure that *purchasers* of interstate telecommunications services and elements receive a certain minimum level of service quality from the incumbent LEC—because the incumbent LEC clearly has market power and degradation of service quality is one of the "classic" methods in which a firm with market power may seek to exercise that power.

Because the incumbent LEC has no incentive to provide quality service to its customers (the monopolist benefits in this regard from a lack of customer choice – the CLEC "consumer" simply cannot switch service providers), competitive LECs suffer from the Commission's use of a "parity" standard to measure loop performance. Because incumbent LECs maintain their bottleneck monopoly control over loop plant, Covad and other competitive providers do not have another wholesale supplier of loops to switch to, and as a result, cannot differentiate their services from the incumbent LEC by providing better service quality and timeliness. The use of "parity" as the benchmark ensures that incumbent LECs are able to wed competitive LECs to exactly the same poor quality loop delivery as the incumbents provide their own retail customers. Surely this could not have been the intent of Congress.

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[28] *Local Competition First Report and Order* at ¶ 47. Of course, even then the incumbent LECs fought hard against the implementation of ANY national rules. BellSouth, for example, "urge[d] the Commission merely to codify the language of the 1996 Act." *Id.* at ¶ 50.
[29] *Local Competition First Report and Order* at ¶ 53.

In addition, one of the ostensible principles of the recent string of RBOC and ILEC mergers has been the "efficiencies" of running incumbent LEC networks across several states. In the context of both the SBC/Ameritech and Bell Atlantic/GTE mergers, those incumbents proposed multi-state service level commitments to this Commission. In addition, all providers of interstate telecommunications services[30] are currently subject to federal service quality rules and standards.[31] In obtaining unbundled loops utilized for the provision of interstate services, competitive LECs should be accorded a certain minimum level of service quality.

Finally, the development of UNE intervals cannot be left to the negotiation process between incumbent and competitive LECs. As the Commission has recognized since 1996, "[n]egotiations between incumbent LECs and new entrants are not analogous to traditional commercial negotiations . . . [t]he inequality of bargaining power between incumbents and new entrants militates in favor of rules that have the effect of equalizing bargaining power." Incumbent LECs have demonstrated time and time again that they are fundamentally opposed to any notion of treating competitive LECs as "customers" rather than competitors, and that the fundamental economic motivation that drives their every interaction with competitive LECs is to discriminate in favor of their own retail service offerings. No negotiation can replace federal rules – without them, competitive LECs would never have been able to access xDSL capable loops, due to the consistent and recurring incumbent LEC refusal to provide such loops. In addition, a competitive LEC must enter into potentially hundreds of interconnection agreements with incumbent

[30] Which, according to the Commission in the *GTE ADSL Tariff* decision, includes the provision of DSL services for dedicated access to the Internet.
[31] *See, e.g.,* 47 C.F.R. §§ 63.60, *et seq.*, 63.100, 63.500-601, 64.401, 64.706, 64.1100-80, 64.1401-02, 64.1501, *et seq.*, 64.1600, *et seq.*, 64.1700, *et seq.*

LECs to provide national coverage—the likelihood of that iterative process resulting in anything remotely approaching a "national installation interval" is slim to none. If the Commission truly wishes to see competitive advanced services rolled out to "all Americans" with a certain minimum level of quality, minimum UNE installation intervals is required.

It is also important to note that the section 271 process, with its jumble of conflicting data, is ineffective as a replacement for federal loop delivery rules as to (1) non-BOC incumbent LECs, and (2) states in which long distance applications are not forthcoming. In the context of its review of Section 271 applications, the Commission has already determined that, where no retail analogue exists for a UNE, the incumbent must provide access in a manner that allows an equally efficient competitor a "meaningful opportunity to compete."[32] That standard, however, is only relevant to competition in a particular incumbent LEC territory if the incumbent is both a BOC *and* chooses to pursue a Section 271 application.[33]

**The Commission must adopt a minimum loop installation rule of 3 business days for loops that require no conditioning, and 5 business days for loops that require conditioning.**

In the *Line Sharing Order*, the Commission cited with approval the provisioning interval adopted by the Texas PUC of 3 business days for standalone xDSL-capable

[32] *Ameritech Michigan 271 Order* at ¶ 130.

[33] A substantial percentage of the United States is served by incumbent LECs that are not one of the four RBOCs. In addition, only 9 of 49 Section 271 applications have been approved by the Commission, for states representing a significant minority of the U.S. population. (In addition, to this date, Qwest has not filed a single 271 application before the Commission.) The Commission is charged with ensuring the development of competitive markets and deployment of advanced services *throughout* the United States. It would be a abdication of the Commission's "public interest" authority to accord consumers in non-RBOC regions an inferior level of competitive entry, or to depend on the individualistic Section 271 timelines (in which entry in one state may be accelerated to the detriment of other states) for adequate enforcement.

loops.[34] This interval is more than sufficient time for incumbent LECs to provision a loop, especially if the incumbents cease delaying the implementation of electronic pre-order and order capabilities. When the loop requires conditioning and the competitive LEC requests such conditioning, the loop interval should be 5 business days so as to permit the incumbent to complete such conditioning activities as are necessary.

In the absence of a three business day loop interval, competitive LECs will continue to suffer egregious intervals that render effective competition with the incumbent all but impossible. For example, Verizon in Massachusetts offered consumers a "sign up to turn on" interval for their retail DSL service of only 6 days.[35] Covad generally wait significantly longer than 6 days simply to receive a loop from a Bell company. Because the loop provisioning process is largely computer-based, the incumbent has very little actual work to do in the field. Other than a truck roll to provision the loop to the customer's premises, and a central office cross connect of the loop to a competitor's point of interconnection, there is little other physical work for the incumbent LEC to do. Three business days is more than sufficient for loop provisioning, and it provides competitors a meaningful and fair opportunity to compete with incumbent LEC retail xDSL services.[36]

It is of vital importance that the Commission put more teeth into its loop provisioning rules and provide competitive LECs a meaningful opportunity to compete with incumbents. The Commission's current "parity" standard measures the time period for loop delivery from incumbent LEC to competitive LEC and compares it with loop

[34] *Linesharing Order,* FCC 99-355 at ¶ 174.
[35] Bell Atlantic-Massachusetts 271 Proceeding, DTE 99-271, BA Response to in-hearing data request DTE-RR-81 (Nov. 19, 1999).
[36] Linesharing UNE intervals are discussed separately below.

delivery from incumbent LEC to incumbent LEC retail customer. This purported parity measure actually measures the time at which a competitive LEC can *begin* to provide service to its customer and compares it to the time that an incumbent LEC has *completed* providing service to its retail customer. After receipt of a functioning loop, a competitive begins the process of provisioning service to its broadband customer. The loop interval that the Commission has considered thus marks the beginning of the competitive carrier's provisioning process, which cannot commence until the loop is delivered. The incumbent LEC, on the other hand, *completes* its installation process with the installation of the loop. The "parity" that the Commission seeks to ensure is thus a false measure of the ability of competitive LECs to turn-up service to their customers. Only through an actual loop provisioning interval can the Commission ensure that competitive LECs can compete fairly and offer a true quality service to consumers – not the monopolist's version of quality.

In sum, the UNE provisioning process and the retail service activation are not the same thing. Incumbent LECs may take a week to activate retail service, but such activation includes the entire customer acquisition and setup process, from ISP provisioning to customer premises installation. It is not limited to the mere provisioning of the UNE itself. Incumbent LECs tack on days to the "provisioning process", the effect of which extends the actually parity measurement longer.[37] For example, provisioning of

[37] The time to coordinate the order with an ISP, or to arrange and perform a "truck roll" for customer installation or inside wiring will add days to the ILEC's "retail ADSL" installation interval. CLECs have to undertake those steps as well. For example, assume that for its retail ADSL service, the ILEC performs the central office cross-connect the first business day after it receives an ADSL order (this is generally all the work that is required to provide line-sharing to a CLEC). The ILEC may then take five business days to arrange a truck roll to perform inside wiring or other work at the customer premises. Under the "parity" standard argued for by ILECs, that additional week will be added to its "installation interval". As a result, the ILEC will be excused from providing line-shared loops to a CLEC within six business days—and the

the line-sharing UNE requires only cross-connect work in the central office – nothing more. Such an activity takes only a matter of minutes to perform. Covad's proposal of a one-business-day interval, as described below, is more than sufficient for such work to be completed, and it ensures that competitive LECs will have a true meaningful opportunity to compete.

The interval established by the Commission must be measured concretely to avoid providing the incumbent LECs any opportunity to wiggle out of the otherwise procompetitive requirements. The interval must be measured from the time the competitive LEC submits the order to the incumbent LEC. Submission of the order is marked by the time that the competitive LEC delivers the order to the incumbent – not the transmission of a notice from the incumbent that the order has been received. In this way, the incumbent is not granted the ability to delay the interval by simply taking two or three days to transmit confirmation. The interval cannot be tolled by intervening "queries" from the incumbent – another favorite delay tactic. For example, incumbents may choose to send an order back to the competitive LEC because the order states "Street" instead of "Str" – not because the incumbent's systems can't process the order, but rather because the incumbent is seeking to delay the provisioning of the loop. Incumbent LECs must not be permitted to toll the interval by "querying" the order back to competitors. If an incumbent LEC needs clarification on an order, the incumbent must seek such information from its own databases, which contain all information on addresses and loop location, and the order must be corrected by the incumbent – using the vast information resources available to it – and not simply rejected back to the competitive

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CLEC still has to coordinate installation and possibly a truck roll. In this sense, the "parity" standard advocated by ILECs would, in reality, *codify and permit* overtly discriminatory provisioning.

LEC. The loop order is "complete" when a functional loop is delivered to the competitive LEC's point of interconnection, the requesting carrier is notified electronically that the loop has been delivered, and the requesting carrier accepts delivery of the loop.

**The Commission should adopt a one business day provisioning interval for the linesharing UNE.**

In order to further facilitate the deployment of competitive broadband services, the Commission should also take immediate steps to implement a linesharing UNE provisioning interval. As the Commission is well aware, the provisioning of line sharing requires only one simple installation step by the incumbent LEC: cross connecting between incumbent's frame and the competitive LEC's splitter. The loop is already in place, already functional, and fully ready for service. Simple cross connect work is all that is required – no field work, no truck roll, nothing other than cross connecting. This is part of the reason the Commission saw fit to adopt linesharing as a UNE in the first place – it severely cuts down on the time it takes for competitive LECs to secure unbundled access to the loop transmission functionality.

As a result, the Commission should ensure that linesharing UNEs are available in a timely manner. In the same way that incumbent LECs will never make short provisioning intervals for standalone loops available unless ordered to do so, incumbent LECs have no incentive to facilitate rapid access to linesharing capability. Indeed, incumbent LECs universally opposed the notion of even adopting linesharing as a UNE – recognizing the threat their monopolies would face if their solo grip on linesharing capability came to an end. The Commission must adopt a rule requiring the linesharing

UNE to be provisioned within one business day – utilizing the same interval parameters defined above – in order to preserve the ability of competitors to access linesharing in a timely manner. The interval for the linesharing UNE where conditioning is required should be three business days. These intervals provide more than sufficient time for incumbent LECs to do the cross connect work – for that is all the provisioning work that is required – necessary for the linesharing UNE. If the Commission is serious about ensuring that consumers benefit from linesharing, then it must be serious about imposing a provisioning requirement on incumbent LECs.

The one business day linesharing interval addresses the need of competitive carriers to provide consumers access to the service they ordered in a rapid manner. It also recognizes the simple provisioning work an incumbent LEC must undertake in order to provision linesharing – one simple cross connect in the central office. All other wiring is completed when the central office is activated for linesharing – in other words, long in advance of submission of the actual linesharing UNE order. This is why since December 7, 2000, the line sharing provisioning intervals in Illinois have been 1 business day for loops not requiring conditioning and 3 business days for line sharing loops requiring conditioning.[38] This "best practice" by the Illinois Commission was fully supported by the record before that agency. The Commission should adopt the same procompetitive interval as the Illinois Commission has done, and require linesharing UNEs to be provisioned in one business day.

[38] Covad Communications Company Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Amendment for Line Sharing to the Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois and for an Expedited Arbitration Award on Certain Core Issues, Docket No. 00-312, 00-0313 (Consol.), August 17, 2000 Arbitration Decision at 25-27; Illinois Bell Telephone Company Proposed Implementation of High Frequency

**The Commission's goal is to harmonize, not supersede, state performance metrics. National UNE performance metrics and measurements will build on and facilitate the future development of state metrics and measurements.**

The Commission seeks comment in the Notice regarding the proper interrelationship between new national performance metrics and measures and those already put in place by various states. It is important to note that the competitive LEC community is virtually unanimous in support of the efforts of numerous states to implement and enforce concrete and specific enforcement plans. Thus, Covad does not seek the implementation of a national performance metric plan that replaces equally or more stringent state plans.

In the *Notice*, the Commission seeks comment on the interrelationship between performance metrics and measures adopted at the national level and those adopted by the various states. Since 1996, state commissions have played a vital role in ensuring that competitive LECs can access UNEs in a timely manner. In particular, state performance metrics, measures, and performance assurance plans have served, in the absence of similar federal rules, as the only means for competitive carriers to secure reasonable nondiscriminatory access to UNEs. Those state commissions that have taken proactive steps to ensure UNEs are available in a procompetitive manner are to be commended for their dedication to competition. State commissions are at one of three stages in their efforts to address incumbent LEC UNE performance: (1) states that have already adopted measures and metrics, (2) states that are in the process of developing such measures and metrics, and (3) states that have not yet begun the process of development.

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Portion of Loop (HFPL)/Line Sharing Service, Docket No. 00-0393, March 14, 2001 Order at 73 (requiring Ameritech Illinois to tariff in Illinois 24 hour interval for line sharing loops not requiring conditioning, and

Covad addresses the method the Commission should use to address these three different stages.

The Commission has already put concrete and specific UNE rules and delineated the relationship between state and federal unbundling rules. Specifically, the Commission made clear in the first *Local Competition Report and Order* that federal UNE rules are a floor, not a ceiling, and that they only preempt the ability of the states to require less stringent unbundling.[39] The Commission repeated this conclusion in the *UNE Remand Order*, concluding that "section 251(d)(3) grants state commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of section 251 and the national policy framework instituted in this Order."[40] Thus, states are free to adopt additional unbundling rules, but may not reduce the unbundling obligations below the floor set by federal rules. The fact that states are free to develop and implement additional UNE requirements *ipso facto* means that the states must be left free to adopt additional performance metrics and standards as well. Were they not permitted to do so, states would left without the power to enforce the very rules that the 1996 Act and the Commission's rules permit them to adopt independently.

Should the states that have already adopted metrics choose to modify those metrics to more closely align them with those adopted by the Commission, they should

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3 days for loops requiring conditioning established in Covad/Rhythms line sharing arbitration).

[39] *See Local Competition First Report and Order*, 11 FCC Rcd 15499 at ¶ 244 ("[W]e adopt our tentative conclusion that states may impose additional unbundling requirements pursuant to section 252(e)(3), as long as such requirements are consistent with the 1996 Act and our regulations."); *see also id.,* ¶ 283 ("We further conclude that, to the extent new entrants seek additional elements beyond those we identify herein, section 251(d)(2)(A) allows the Commission and the states to require unbundling of such elements . . . .").

[40] *UNE Remand Order*, 15 FCC Rcd 2696 at ¶ 154. *Cf. id. at* ¶ 157 (". . . state decisions to remove these network elements from the national unbundling obligations would "substantially prevent implementation of the requirements of section 251," as prohibited by subsection 251(d)(3)(C).").

be free to do so. Indeed, states may wish to streamline their rules to match the Commission's rules in order to reduce the burden on the states to evaluate incumbent LEC performance. If, however, the states determine that their more stringent measures (those that do not fall beneath the floor established by the Commission's rules, but actually exceed them) should remain in place, this promotes the procompetitive goals of the Act. Indeed, the more freedom the states are given to put in place more, not fewer, procompetitive rules, the closer the nation will be to enjoying true competition in the local telecommunications market. We certainly are not there yet.

The Commission asks in the Notice whether it is "consistent" with the deregulatory purpose of the 1996 Act to have different state and federal metrics in place across the country.[41] The 1996 Act clearly anticipated shared jurisdiction between states and the Commission for implementation of the market-opening provisions of the statute. Indeed, the Commission and the various states share authority to adopt unbundling requirements. The question is not whether the Act foresaw that different requirements would be imposed by the states and the Commission – that is without question correct. Rather, the question is whether the purpose of the Act is met when the Commission and the states enact procompetitive rules that serve to increase the likelihood that incumbent LECs will comply with the market-opening provisions of the Act and permit the benefits of competition to reach all Americans. The answer is clearly yes. The Commission has long recognized that states and the federal government work in partnership to ensure local markets are open – witness the section 271 process, which could not function without the states and the FCC examining BOC compliance with the market-opening provisions of the Act. Often, the states and the FCC examine the same issues, and often

they end up reaching different conclusions. But that is exactly how Congress intended it, recognizing that regulation was the only way to ensure that the incumbent monopolists, who have no incentive to voluntarily cede market share to their competitors, complied with the Act.

Because the Commission's adoption of national performance metrics and penalties is undertaken pursuant to section 251(c)(3), the preemption process that applies to these metrics and penalties is exactly the same as applies to the underlying unbundling obligations. In the same way that a state cannot eliminate the obligation to unbundle linesharing, which has been adopted as a UNE pursuant to section 251(c)(3), it cannot eliminate the obligation, if adopted by the Commission, to provision the linesharing UNE in 1 business day. In the same way that a state could order additional UNEs, it could also order linesharing to be provisioned in 12 hours. Federal rules are a floor, not a ceiling, and any state performance metrics or remedies that are equal or more stringent than federal rules are not disturbed by those national rules. Similarly, to the extent an incumbent LEC is doubly punished, pursuant to a state and federal performance plan, the incumbent LEC would have the ability to file a petition with the FCC seeking permission to offset monies owed to competing carriers because of state plan liability.

In sum, the Commission cannot – and indeed, sound policy suggests that it should not – supersede the hard work of the state commissions that have adopted performance remedy plans. Indeed, for the last six years, those plans have been the only effective means of ensuring incumbent LEC compliance with the market-opening provisions of the 1996 Act. The Commission need not be concerned about overlapping plans causing

[41] Notice at ¶ 18.

overlapping liability, because the incumbent LECs have the incentives and resources to ensure that such duplication does not occur.

**Enforcement of the national performance metrics and measurements must be swift, self-executing, and effective.**

To further facilitate the UNE provisioning process, the Commission must establish concrete penalties for incumbent LEC failure to provision loops in compliance with the Commission's rules. Covad have argued on numerous occasions before the Commission that an efficient means of enforcing loop provisioning rules – and providing adequate incentive for incumbent LEC compliance – is to impose strict and immediate financial penalties on the incumbent LECs. Those penalties must be self-executing, and they must be paid to the aggrieved carrier in order to compensate for the competitive harm suffered as a result of late loop delivery.

In the Notice, the Commission sought comment on "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."[42] The Commission should adopt exactly such a self-executing performance plan, modeled on similar state plans that have been put in place across the country. Such a plan would permit the Bell companies to utilize existing systems, processes, and personnel to implement, thus avoiding any additional burden on those carriers. In addition, by automating the remedy plan, the Commission will avoid the need for affirmative regulatory action to implement the plan, saving staff and resources for actual disputes that may arise based on the ILEC's reported performance.

[42] Notice at ¶ 22.

If, as is the case before the states, the parties are satisfied with the reported performance and penalties paid, there is no work for the Commission to do.

The Commission has authority, pursuant to section 206 of the Act, to put in place the remedy provisions of its federal performance metrics rules proposed by Covad. Specifically, section 206 provides:

> In case any common carrier shall do, or cause or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter of thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of the damages sustained in consequence of any such violation of the provisions of this Act . . . .[43]

In determining the parameters of its performance remedy plan, the Commission must consider certain important factors. First, the Commission must consider the vital policy goal that it seeks to advance by adopting a full panoply of performance metrics and measures. The Commission has proposed not only the adoption of specific rules that define just what the obligation to provide UNEs in a "just, reasonable, and nondiscriminatory manner" means, As such, the Commission has recognized that rights without remedies are useless. Thus, the Commission's adoption of a self-executing plan serves the important policy goals of regulatory certainty, minimization of burdens, and providing incentive for incumbent LEC compliance with the Act.

For loop delivery intervals, the Commission should establish associated penalties that relate to the recurring and nonrecurring charges for those loops. Thus, for example, should an incumbent LEC fail to deliver a loop within the three day provisioning interval, that incumbent LEC would be required to credit the requesting carrier and amount equal to the entire nonrecurring charge for that loop. Because that amount by itself is not a

sufficient financial deterrent, the Commission must also establish associated penalties based on the amount of delay. Using the example of a UNE loop, the Commission should require incumbent LECs to pay to the requesting carrier $50 per loop for each day that loop is late. Thus, a UNE loop delivered 4 days late would result in a payment to the requesting carrier of an amount equal to the nonrecurring charges for that loop, plus $200. For linesharing UNEs, the Commission should utilize the same penalty scheme. For a loop that is late, the incumbent LEC must refund the nonrecurring charges associated with that linesharing UNE, plus $50 per day that the linesharing UNE is late.

To the extent an incumbent LEC believes that its performance metrics do not accurately account for exigent circumstances, there are several mechanisms available to the incumbent. First, because it would be making an allegation regarding the competitive LEC's compliance with the Commission's rules, the incumbent could simply file a complaint pursuant to section 208 of the Act and seek Commission adjudication of the dispute. Second, the incumbent could pursue action in federal court, pursuant to the choice of law provisions of section 207.

The Commission also asks "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."[44] The principal benefit to the Commission of the adoption of national performance standards is the avoidance of state-specific battles of data in each and every section 271 proceeding. National standards ensure that competitive LECs and incumbents both utilize the same

[43] 47 U.S.C. § 206. Section 206 also contains provisions related to the recovery of attorney's fees.
[44] Notice at ¶ 22.

objective measures of performance, established by the Commission, in evaluating whether the BOC has complied with its market-opening obligations in a particular state. Thus, a violation of national performance measures, demonstrated through the BOC's monthly data submissions and payments made to the competitive LECs, should be *prima facie* evidence of that BOC's failure to comply with its UNE checklist obligations.

**Scope of the Commission's national performance rules**

The Commission seeks comment in the notice as to the scope of national performance rules, and in specific whether such rules should apply to all incumbent LECs. In the first instance, there is no question that the full panoply of the Commission's rules must apply to the four Bell Operating Companies and all of their affiliates and subsidiaries. Second, it is equally clear that the rules should not apply to any incumbent LECs that are automatically exempt from the unbundling rules of section 251(c)(3). For those carriers that are not automatically exempt, but could petition the Commission or a state commission for such an exemption, such carriers should be considered subject to the Commission's national UNE performance rules until such time as the relevant regulatory authority fully exempts the carrier from unbundling obligations.[45] To the extent an incumbent carrier's section 251(c)(3) obligations are modified, rather than lifted entirely, that carrier should remain subject to the Commission's national performance rules until such time as the Commission rules on a petition from that carrier seeking a concomitant modification to its performance obligations.

The legal analysis underlying the applicability of national performance rules is simple: carriers subject to the unbundling obligations of section 251(c)(3) are also

[45] For example, section 251(f)(2) permits certain rural carriers to petition for an exemption from section 251(c)(3).

subject to the "just, reasonable and nondiscriminatory" performance obligations of that statutory provision. Because the Commission's national performance rules are no more than an agency interpretation of the parameters of the "just, reasonable and nondiscriminatory" obligation, carrier subject to the statutory obligation are legally bound by the Commission's interpretation of that obligation. Indeed, carriers are subject to it until such time as they are exempted. Thus, the Commission must clearly provide in its rules that any incumbent carrier subject to the unbundling requirements of section 251(c)(3) of the Act is subject to all of the Commission's performance standards requirements, until a final, non-appealable decision by an appropriate regulatory authority determines that the carrier is no longer subject to section 251(c)(3) unbundling obligations.

In addition, the Commission recognized in the Notice that incumbent LECs have no inherent incentive to comply with the market-opening provisions of the 1996 Act. As such, national performance metrics serve to provide a concrete enforcement mechanism to provide incentive to the ILECs to comply with the law. Verizon seeks to extend the Commission's performance reporting requirements and penalties to competitive LECs, in an effort to impose additional costs and burdens on competitive carriers.[46] Such a requirement would be a waste of the Commissions time and resources, as well as the limited resources of competitive LECs, and would distract from the real purpose of this proceeding. What possible regulatory purpose could be served by requiring Covad and other competitive LECs to compile data for submission to the Commission on

[46] *See* 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).

compliance with requirements in the Act to which competitive LECs are not subject? Further, what purpose would be served by forcing Covad and other competitive LECs – which do not, unlike Verizon, have any mechanisms in place to capture and report such data – from doing so? Verizon seeks to distract from the real issue in this proceeding: bringing incumbent monopolists into compliance with the statutory obligations they have ignored for six years.

The Commission also seeks comment on the balance it should draw between burdens on parties obligated to compile performance data and the statutory requirement that the Commission adopt rules to "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."[47] The balance the Commission should strike is clear. As set out above, the Commission's performance reporting requirements build on plans put in place by states across the country. As a result, the national rules permit BOCs to utilize existing systems and procedures without additional burdens. The Commission's statutory duty to ensure that incumbent LECs comply with the Act is paramount, and must be the primary consideration in the Commission's deliberation on the proper rules to adopt.

**Specific Metrics and Measures**

The Commission has proposed adopting a core set of metrics that addresses four specific areas of UNE performance: "pre-ordering, ordering, provisioning, and ongoing maintenance and repair services."[48] In order to assist the Commission in adopting concrete and enforceable measures that address those four vital areas of the UNE process,

[47] Notice at ¶ 26.
[48] NPRM at ¶ 25.

Covad has attached, as Appendix A to these comments, a set of 13 performance metrics. Those 13 metrics address the four key areas of section 251(c)(3) compliance identified by the Commission as most important to competitors. Covad believes that the adoption of the 13 metrics it proposes, which address UNE loops and linesharing, will provide an acceptable baseline minimum performance gauge. These proposed metrics must be associated with the self-executing performance plan discussed elsewhere in these comments.

The metrics set out in Appendix A to these comments are detailed in their purpose, their business rules, permissible exclusions, and manner of reporting. They are self-explanatory, in that they set out the purpose of the metric, the disaggregation required[49], the permissible exclusions, and the method of reporting. To briefly summarize those metrics:

- Percent FOC Received on Time. FCC-POI-1. Measures the success rate of the FOC delivery portion of the provisioning process. Used to identify issues that cause delays in the preorder provisioning process.
- Percent Service Order Reject on Time. FCC-POI-2. Measures the success rate of the reject delivery portion of the provisioning process. Used to identify issues that cause delays in the preorder provisioning process. This is an exception measure, used to monitor orders that do not flow through the normal provisioning process.
- Percent Slid FOCs. FCC-POQ-1. Tracks and measures the percentage of times an ILEC changes the Firm Order Commitment Date. Designed to

[49] For example, in order to accurately reflect performance, metrics must be disaggregated at the product level, the UNE type level, and at the geographic level (by state).

encourage the delivery of a valid FOC. Excludes Customer Requested Due Date changes.

- Percent FOC In Interval. FCC-POQ-2. Measures the percentage of FOCs offered whose intervals are less than or equal to the standard interval for the product. Used to ensure the delivery of a valid FOC.
- Average Delivery Interval. FCC-OPI-1. Measures the average amount of time in business days that elapses from service order placed to loop delivery. A loop is considered delivered when the ILEC has completed the work necessary to provide a DSL quality product to the CLEC AND the CLEC has accepted that delivery. This interval will be defined as the ILEC service delivery interval.
- Percent Joint Acceptance Test of UBL. FCC-OPQ-1. Measures the percentage of 2-wire unbundled loops delivered that go through the Joint Acceptance Test process. Higher levels of testing will improve the quality of loop delivered. An order will be considered acceptance tested when the parameters established for JAT (test documented, on-hold time exceeded, etc.) are met. Sub-metric will be % JAT Passed.
- Percent Commitment Met. FCC-OPQ-2. Measures the percentage of time the service delivery interval is within the promised delivery interval. A loop is considered delivered when the ILEC has completed the work necessary to provide a DSL quality product to the CLEC AND the CLEC has accepted that delivery.

- Percent Interval Met. FCC-OPQ-3. Measures the percent the standard service delivery interval is met. A loop is considered delivered when the ILEC has completed the work necessary to provide a DSL quality product to the CLEC AND the CLEC has accepted that delivery.
- Mean Time to Repair. FCC-MRI-1. Measures the interval for all repair tickets issued to the service provider.
- % Repair Complete in X. FCC-MRI-2. Track the percentage of repair tickets completed within specified intervals. This will identify repair time increases.
- Installation Quality. FCC-MRQ-1. Measures the quality of loop installation by identifying service failures within intervals close to installation completion.
- Repeat Trouble in 30 Days. FCC-MRQ-2. Measures the percentage of circuits with chronic trouble by measuring the number of trouble tickets issued in 30 days on a single service order.
- % Trouble Ticket Rate. FCC-MRQ-3. Measures the percentage of circuits with trouble by measuring the number of trouble tickets issued in the reporting month. Measurement reflects the overall network quality.

Covad strongly believes that the adoption of these 13 metrics pursuant to the Commission's Notice will go great lengths to satisfy the Commission's statutory obligation to ensure incumbent LEC compliance with section 251(c)(3) obligations. These metrics address the particular parameters of data reporting necessary to ensure nondiscriminatory provisioning of loop and linesharing UNEs.

**Exclusions**

The Commission has asked commenters to address "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."[50] Covad's proposed metrics severely limit the ability of incumbent LECs to exclude broad categories of UNE orders from the reported metrics. The incumbent phone companies have demonstrated a pattern of deceptive submissions of performance data to the Commission and competitive carriers. This is not mere rhetoric: the Commission's record of adjudication speaks for itself.[51] In addition, the incumbent LECs have no incentive to accurately report their data. Thus, the Commission must severely limit the excuses that it provides the incumbents an opportunity to use to avoid reporting on their actual performance.

The Commission proposed in the Notice that it adopt "an exceptions process should be established to permit an incumbent LEC to explain or restate reported results to

[50] Notice ¶ 30.

[51] For a sampling of such behavior, see, *e.g.* "FCC Enforcement Bureau and Verizon Enter into Consent Decree; Verizon to pay $77,000 and Implement Remedial Actions to Help Ensure Compliance with Local Competition Rule," News Release, Sept. 14, 2001, (Verizon fined for refusal to comply with FCC rule requiring Verizon to provide data to CLECs regarding which central offices are no longer available for collocation) *available at* http://www.fcc.gov/eb/News_Releases/veriz1.html ; "FCC Affirms $88,000 Fine Against SBC For Failing To Comply With Merger Conditions," News Release, May 29, 2001 (SBC used incorrect benchmarks and excluded key data from its performance reports for a period of up to 13 months), *available at* http://www.fcc.gov/eb/News_Releases/nrsbc052901.html ; "FCC Enforcement Bureau Imposes $94,500 Fine Against SBC For Violations Of Local Competition Rule," News Release, May 24, 2001, (SBC fined for failure to comply with FCC rule requiring provisioning of collocation data to CLECs), *available at* http://www.fcc.gov/eb/News_Releases/nrsbc052301.html ; "FCC Proposes To Fine SBC Communications, Inc. $2.52 Million", New Release, Oct. 16, 2001 (SBC's filing of inaccurate information in the Kansas/Oklahoma section 271 proceeding), *available at* http://www.fcc.gov/eb/News_Releases/nrsbc1016.html ; "FCC And BellSouth Enter Into A $750,000 Consent Decree Improving Compliance With Local Competition Rules," News Release, Nov. 12, 2000 (BellSouth failed to comply with Act and Commission rule requiring BellSouth to provide cost data to CLECs), *available at* http://www.fcc.gov/eb/News_Releases/nrbellsouth.html ; "Enforcement Bureau And Verizon Enter Into $250,000 Consent Decree Regarding Long Distance Verification And Record Retention," News Release, Oct. 17, 2000, (Verizon failed to comply with rules regarding data retention of customer records), *available at* http://www.fcc.gov/eb/News_Releases/nrverizon.html .

account for circumstances beyond its control."[52] It is vitally important to the success of the Commission's performance rules that the "exceptions" process include a post facto appeals process, rather than a series of exceptions improperly places the burden on competitive LECs to seek recourse for violations of the Commission's rules. If the Commission permits incumbent LECs to utilize a long list of exclusions from the performance reports, the Commission is giving the inmates the keys to the prison. Simply put, if an incumbent LEC is the arbiter of not only what performance it must report every month, but also whether it must report performance at all as to broad categories of service, it will be as if the Commission had never adopted any performance rules at all. Indeed, it will be worse: the Commission will be empowering the incumbent LECs to receive official regulatory blessing of the incumbent's self-selected performance. The Commission has extensive experience with the unwillingness of the incumbent LECs to report their performance truthfully and fully. That pattern of behavior has emerged even in the absence of such exclusions.

Covad's proposed benchmarks generally use 95% performance as the level of performance necessary to satisfy the metric. Thus, a 5% noncompliance rate is automatically built-in to provide the incumbent LEC a performance cushion to satisfy the need for exclusions. Should the incumbent LEC need to further to excuse its performance for various operational reasons that are not reflected in the business rules of the metrics, the mechanism to address those potential exclusions must be concrete and considerate of the incentives on the parties to the transaction. The incumbent LEC has only one incentive: fail to deliver the UNE, an essential input to its retail competitor, as

[52] Notice at ¶ 32.

often as possible. Where it must eventually deliver the UNE, the incentive is to delay provisioning, or to degrade the performance of that provisioning, as much as possible.

Given that background, the Commission must deny incumbents the tools they need to avoid regulatory scrutiny of their UNE performance. A long list of metric exclusions does not serve that goal. Simply put, the burden must be on the incumbent LEC, not the requesting carrier, to justify failure to deliver a UNE in a timely manner. In other words, the Commission must start and end with the assumption that the incumbent LEC is required to provide a UNE. Although that sounds tautological, given the requirement that incumbent LECs provide UNEs to requesting carriers, it is vital that the Commission's rules recognize that principle. Metrics replete with exceptions do not serve this goal. Exceptions implement the statutory requirement thusly: incumbent LECs are required to provide UNEs, except where they don't believe they have a suitable loop, or except after 5pm , or except where the incumbent LEC technician marks a form that says the end user wasn't home, or except when the ILEC technician's load was too much to complete in one day, etc. The whole reason the Commission is adopting national performance metrics is to take the power to decide whether to comply with the law or not away from the incumbent LEC, which has no incentive to do comply. Rather, the Commission's rules must make clear that the default is that the incumbent must deliver the loop, not that the incumbent must scan the list of available exceptions to seek an excuse to back up its refusal to provide the loop.

Should the incumbent LEC need to seek exclusions from its reported performance, the Commission should put in place a simple reconsideration process that properly places the burden on the incumbent for avoiding the statutory unbundling

obligations of section 251(c)(3). Specifically, the Commission should not include exclusions in the metrics it adopts that permit incumbents to escape liability for failure to deliver a UNE based on factors within the incumbent LEC's control. Thus, facilities misses should not be an exclusion, because were it to be an exclusion the incumbent LEC would have no incentive to actually find facilities to fulfill the UNE order. In the event that facilities are truly not available, the incumbent LEC can always file a subsequent petition with the Commission seeking adjudication of those purported excuses. What the Commission cannot permit is a continuation of the status quo: incumbent LECs providing UNEs in a timely and quality manner in few circumstances, and utilizing the full panoply of excuses available to justify noncompliance with the Act.

The requirement that incumbent LECs file post facto requests for adjustments is exactly the process the incumbent carriers follow today with respect to state performance plans. For example, every month, Verizon files a petition with the New York PSC seeking various adjustments to the New York PAP for the prior three months of data, based on various exclusions that Verizon would like to make. The New York PSC then rules on those requests and permits Verizon to make adjustments as appropriate. The states have wisely constructed their performance plans in this manner, rather than give the incumbent LEC (the party with the ability to pay) the power to deny due compensation to the aggrieved carrier for months while the incumbent pursues appeals without merit. The Commission should adopt the same procedure. Incumbent LECs are in control of the information necessary to justify their failure to provide UNEs – competitive carriers are not. As such, the burden is properly on the incumbent LEC – the

party with the necessary information, and the incentive to avoid compliance with the law – to prove that it is entitled to a refund of amounts paid in damages to competing carriers.

**The BOCs already have the systems and procedures in place to process and produce the necessary data, and would suffer no additional burden under national rules**

The Commission asks in the Notice for parties to address with specificity "why their recommended outcomes do not increase carriers' overall regulatory burdens."[53] As to the Bell Operating Companies, the answer is simple: these four companies already have the staff, the systems, and the means to implement the proposed metrics immediately. As set out in greater detail below, the four Bell Companies, whether they have received long distance approval or not, are required by state commissions to track their performance, on a monthly basis as to individual competitive LECs, and report that performance in a disaggregated form. The computer systems to calculate and track that data are in place at all four BOCs, the expert staff necessary to track that information is on hand, and the expertise on how to track the data and report it to regulatory authorities is firmly established. The additional regulatory burden that accompanies a requirement that the Bell Companies track monthly UNE performance data that they already compile across their footprints today is nil.

Each of the four Bell Operating Companies will argue that national performance metric reporting requirements impose an undue additional burden that serves no regulatory purpose. In order to counter those false claims, the Commission must first recognize the vital public interest in requiring the BOCs to report on UNE performance and pay self-executing penalties for failure to comply with the market-opening provisions of section 251. To address the burden claim, the Commission need only look at the

comprehensive performance plans at the state level, pursuant to which all four Bell companies already have the systems, processes, and personnel in place to compile and disseminate a much wider variety of performance data than will be required by the federal rules under consideration in this proceeding. The BOC plans already in place across the country are much more detailed and complex than the plan proposed by Covad, or indeed the plan contemplated by the Commission in its Notice. Indeed, each BOC is already responsible for monthly disaggregated performance reporting, by state, on hundreds of metrics as to dozens of products and wholesale customers. A brief examination of the complexity of these state plans should answer any concerns that the Commission's adoption of a few metrics, most of which are already in use across the country, will in any way burden the BOCs.

Verizon

In April 2000, Verizon completed its Performance Assurance Plan (PAP) for New York. The plan includes the adoption of carrier-to-carrier service measurements and standards, scoring mechanisms to determine whether CLECs are receiving non-discriminatory treatment (including statistical methodologies), bill credits for unsatisfactory performance, monthly reporting requirements, and provisions for annual reviews, updates and audits. Also included are provisions for a Quality Assurance Program for Verizon-NY's measures and an Exceptions Process that will allow VZ-NY to obtain, subject to state Commission approval, modifications to reported service results. Under this plan, VZ-NY issues bill credits to CLECs if it provides unsatisfactory performance.

[53] Notice at ¶ 34.

Measures and standards in the plan have generally been taken directly from the Guidelines for Carrier-to-Carrier Performance Standards and Reports developed in Case 97-C-0139 at the New York State Public Service Commission and cover the areas of Pre-order, Ordering, Provisioning, Maintenance and Repair, Billing and Network Performance. These measures and standards were developed after more than two years of collaborative meetings with CLECs. Primarily, two interrelated methods are used to monitor VZ-NY's wholesale performance to CLECs on the performance measurements. The first method is designed to measure VZ-NY's overall Section 271 performance in four categories that correspond to the methods or modes CLECs use to enter the local exchange market: Resale; Unbundled Network Elements; Interconnection (Trunks); and Collocation. This is referred to as the Mode of Entry (MOE) measurements method. These measurements provide a mechanism to measure the overall level of VZ-NY's service to the entire CLEC industry in the four areas.

A second method measures VZ-NY's performance in twelve critical areas, on both a CLEC-specific and a CLEC-aggregate basis. The critical measures are: (1) Response Time OSS Interface; (2) OSS Interface Availability (Prime Time); (3) % On Time LSR and Completion Notice Metrics; (4) % Missed Appointment – VZ – EEL; (4b) % Missed Appointments; (5) % Missed Appointments – VZ – No Dispatch – Platform; (6) % On Time Performance Hot Cut (adjusted for misses due to late FOCs); (7) % On Time Performance – UNE LNP; (8) % Repeat Reports within 30 days; (9) Mean Time to Repair; (10) % Final Trunk Groups Blocking; (11) Collocation; and (12) DSL Metrics. This is referred to as the Critical Measures method. The Critical Measures are a subset of the measures included in the MOE measurements. If VZ-NY's overall performance

score in the four categories falls below a minimum score in any given month, wholesale price reductions in the form of bill credits will be implemented and remain in effect for one month.

Verizon has exported the New York PAP to numerous of its other in-region states, and now reports (and pays) on a monthly basis on dozens of metrics, UNE categories, and carriers. In short, Verizon has systems already in place to handle the requirements of a federal performance metrics program. Verizon's systems can process not only the metrics data, by carrier, on a disaggregated basis, but they can also process the self-executing performance remedy aspect of national rules. Verizon's systems already utilize such a system on a state basis, and payments are automatically made to the aggrieved carrier by Verizon's systems. Thus, adoption of national metrics and self-executing penalties would impose no additional burden on Verizon.

SWBT Performance Remedy Plan

Southwestern Bell (SWBT) developed its Performance Remedy Plan (Plan) as part of its generic interconnection agreement for Texas. The interconnection agreement, as well as the Performance Remedy Plan, were developed in a collaborative process with the Texas Public Utility Commission and numerous CLECs. The plan provides that SWBT will provide a CLEC with a monthly report of performance for more than 100 performance measures. These measures include: (1) Resale POTS, Resale Specials and UNES; (2)Resale POTS and UNE Loop and Port Combination Combined by SWBT; (3) Resale Specials and UNE Loop and Port Combinations Combined by SWBT; (4) Unbundled Network Elements; (5) Interconnection Trunks; (6) Directory Assistance and Operator Services; (7) Local Number Portability; (8) 911; (9) Poles, Conduit and Rights

of Way; (10) Collocation; (11) Directory Assistance Database; (12) Coordinated Conversions; (13) NXX; and (14) Bona Fide/Special Request Process. SWBT collects, analyzes, and reports performance data for these measures in accordance with SWBT's Performance Measurement Business Rules, as approved by the Texas Commission.

SWBT uses a statistical test, a modified "Z-test," for evaluating the difference between two means (SWBT and CLEC) or percentages, or the difference in the two proportions. The modified Z-tests are applicable if the number of data points are greater than 30 for a given measurement. In cases where benchmarks are established, the determination of compliance is through the comparison of the measured performance delivered to the CLEC and the applicable benchmark.

Enforcement of the Plan is through liquidated damages and assessments. SWBT pays liquidated damages to a CLEC according to Tier-1 measurements identified as High, Medium, or Low on the list of performance measures. Assessments are applicable to Tier-2 measures identified as High, Medium, or Low on the list of performance measures, and are payable to the Texas State Treasury. SWBT is not liable for the payment of either Tier 1 damages or Tier 2 assessments until the Commission approved an Interconnection Agreement between a CLEC and SWBT containing the terms of the Performance Remedy Plan. Tier 2 assessments are paid on the aggregate performance for all CLECs that are operating in Texas, unless the CLEC has a payment plan that is not comparable to that in Tier 1 of the Performance Remedy Plan.

Like Verizon, SBC also has the experience, systems, procedures, and processes necessary to report its wholesale performance as to a limited number of metrics to the Commission and competing carriers. SBC also has systems in place to implement a self-

executing performance remedy plan, such as that proposed by the Commission, and to ensure that payments are properly made to carriers that have been subjected to discriminatory treatment.

Qwest Performance Assurance Plan

Qwest is currently engaged in a collaborative process with eleven of the fourteen state commissions in its territory to finalize its Post Entry Performance Plan (PEPP). The statistical methods and the payment structure of the Texas PAP served as the starting point for the PEPP. Qwest has already deployed systems and processes necessary to track all of the measures and metrics set out in the Texas plan throughout the Qwest region. Qwest is therefore just as prepared, and just as capable, as the other BOCs to implement a national performance metrics plan without additional burden.

BellSouth Service Quality Measurements

The Georgia Public Service Commission has required BellSouth to submit performance reports since May 1998, when it issued an order approving BellSouth's Service Quality Measurements (SQM). BellSouth's SQM covers 10 different functional categories including: Pre-ordering; ordering; provisioning; maintenance and repair; billing; operator services and directory assistance; E911; trunk group performance; and, collocation. Each of these categories corresponds to a function on which BellSouth's performance to CLECs is measured. Within each of these functional categories is a series of measurements. Each measurement is broken down into 10 categories including: The measurement itself; a definition of the measure; any exclusions to the measure; business rules; levels of disaggregation; a calculation of the measurement; report

structure; data retained relating to CLEC experience; data retained relating to BST experience; and, retail analog/benchmark.

BellSouth's Voluntary Self-Effectuating Enforcement Mechanism (VEESM) is based on key outcome-oriented measurements contained in the SQM as well as the corresponding analogs and benchmarks, and established a three-tiered schedule for penalties for non-performance. The three tiers are as follows:

- Tier-1 enforcement mechanisms are triggered when BellSouth fails on any one of the Tier-1 VSEEM measurements for a particular month and are paid directly to the individual CLECs;
- Tier-2 enforcement mechanisms are triggered when BellSouth fails at the CLEC aggregate level on any one of the Tier-2 VSEEM measurements in a calendar quarter. These payments would be made directly to the State;
- Tier-3 enforcement mechanisms are triggered when BellSouth consistently fails at the CLEC aggregate level on any 5 of the 12 Tier-3 VSEEM measurements for 3 consecutive months in a calendar quarter. Under Tier-3, BellSouth will voluntarily discontinue marketing long distance service in Georgia until such time as BellSouth's performance improves.

The object of the self-executing remedies plan is to ensure that carriers need not petition the Georgia Commission to resolve disputes about poor performance and to remove the delays and expense of pursuing litigation. The plan has an absolute cap of 44% of BellSouth's net revenues, which equals approximately $340 million.

As with its BOC brethren, BellSouth has the systems and procedures in place to report on a wide variety of performance metrics. In addition, like the other three BOCs,

BellSouth has the systems in place to implement a self-executing performance plan and to ensure that payments are properly made to the aggrieved carrier.

Given the experience that the BOCs already have with measuring performance on a state-by state basis, the Commission should require incumbent LECs to report on performance to the Commission and competitive LECs by state.[54] Similarly, the Commission's remedy plan should require performance penalty payments to competitive LECs be made on a state by state basis.

**Data Reporting and Auditing**

The Commission seeks specific comment on the most effective means of ensuring that the data submitted by incumbent LECs is accurate and verifiable. As the Commission well knows from its prior section 271 applications and from merger proceedings, incumbent LEC submission of data to the Commission is subject to misstatements, restatements, and outright refusals to comply with the Commission's rules. As discussed above, incumbent LECs have no incentive to submit accurate data unless they are subject to check, and unless completion of that check they are subject to concrete penalties for failure to comply with the data reporting requirements.

The Commission should adopt specific audit requirements, overseen by the Commission (not the incumbent LEC) and conducted by the Commission staff with assistance from independent auditors if necessary.[55] The incumbent LECs will be more inclined to submit accurate and complete data to the Commission, and to accurately pay damages due to competing carriers, if they are subject to audit. Thus, the audit procedures would "ensure that both regulators and interested parties may trust the

[54] Notice at ¶ 83 (seeking comment on level of geographic disaggregation for performance measures).
[55] Notice at ¶ 74.

accuracy and validity of the incumbent LEC-generated and reported data and whether such procedures can be instituted without increasing carriers' overall regulatory burdens."[56] In addition to the audit requirements, incumbent LECs must make available, on a website in carrier-specific and UNE product-disaggregated manner, the raw data that underlies the performance metric calculations undertaken by the incumbents. The availability of such raw data will impose no additional burden on the incumbent LECs, as they are (obviously) required to compile such data as part of the data calculation process. Absent such audits, as the Bell companies have shown too many times, neither regulators nor competitive carriers can have any faith in the validity of the incumbents' data.

The Commission also seeks comment on whether regular collaborative meetings of all carriers should be made a part of the national performance rules.[57] The purpose of such collaborative sessions, as with collaboratives that take place at the state level, would be to address the "development and refinement" of national performance rules.[58] Covad participates actively in such collaboratives in all four BOC regions, and would welcome participation in such sessions at the federal level to address the specifics of the federal rules. It is of vital importance to the success of those rules, however, that the Commission leave none of the initial implementation of those rules to such a collaborative, and that those rules be effective as of the release of the Commission's order, and not as of the commencement of collaboratives. In Covad's experience, the BOCs use collaboratives to delay implementation of needed metrics and requirements.

The Commission must assign staff from both its policy making and enforcement arms to the collaborative sessions, and Commission staff must be in charge of the

[56] Notice at ¶ 74.
[57] Notice at ¶ 75.

collaboratives, including setting the agenda and determining deadlines for deliverables. Meetings should be convened monthly at the Commission, and the Commission should solicit input from interested parties as to the agenda for each meeting. In no event should the Commission tie any of the metrics or measures it adopts in this proceeding to implementation of the collaborative process – the rules must go into effect as soon as possible, and any subsequent need for modification can be addressed in the collaborative as industry gains experience with the Commission's rules.

The Commission must also delegate authority to the Common Carrier Bureau to implement metric business rule changes as necessary to address the concerns of all parties. Although the Bureau would not be empowered to make such changes without soliciting comment from interested parties, the Bureau's delegated authority in this arena would ensure more timely addressing of carrier concerns. Finally, the Commission should not set any concrete sunset rule for the performance metrics it adopts. Because such metrics are put in place in order to ensure incumbent LEC compliance with the obligations of section 251(c)(3), so long as those obligations remain in place, the metrics that ensure compliance must remain in place as well.

**The Commission must take affirmative steps to ensure the immediate and timely implementation of its rules.**

The Commission should ensure that its procompetitive performance rules are immediately available to competitors. Possible points of delay include the time period between order adoption and rule effective date; commencing of negotiations for interconnection agreement modifications; arbitration of those modifications; implementation of the arbitration awards – all of these delays, which add up to months if

[58] *Id.*

not years of delay, can be avoided. The Commission must set out a concrete and definite timetable for implementation of its rules. In the *Linesharing Order*, the Commission adopted a six-month timetable for negotiation and implementation of interim interconnection agreements to ensure the rapid deployment of the linesharing UNE. In the context of the performance rules, there is nothing for an incumbent LEC to "implement," so the time period should be significantly shorter. An incumbent LEC, in order to submit itself to the Commission's three business day loop interval, must simply provide the loop – pursuant to longstanding methods and procedures already in place – in a shorter time period than it has traditionally been willing to do so.[59] The Commission must make clear that the rules it adopts become automatically effective, and do not require inclusion in an interconnection agreement or any action by the competitive LEC to implement the rules.

**The Bell company separate affiliates – which are on their last legs – provide no replacement for concrete loop provisioning intervals**

Certain incumbent LECs have suggested that their separate affiliates, or the separation-type treatment they afford their integrated retail arms, offer sufficient protection against discrimination to obviate the need for national performance rules. The level of integration between the incumbent LEC and its affiliates renders the affiliate an ineffective protection against UNE provisioning practices. The affiliate is not a true "wholesale" customer of incumbent loops, because the affiliate relies on the sales, maintenance, and operational services of the incumbent and the incumbent's ISP as well. As a result, the loop "interval" that the affiliate (or, indeed, the integrated incumbent LEC

[59] Indeed, the Commission already has a rule is place providing that it is a violation of the incumbent LEC's statutory duty to negotiate in good faith to refuse to permit an interconnection agreement "to be amended in

retail arm) receives is inexorably linked to all other operational aspects of the service delivery process. Thus, if the incumbent affiliate "receives" its loop in seven days, and the entire service provisioning process undertaken by the incumbent on behalf on its affiliate (ISP service provisioning, OSS updates, truck roll to customer premises, etc.) is complete, the affiliate can turn up service as soon as that loop is delivered. The competitive LEC, on the other hand, can only *begin* the customer provisioning process when its gets its loop on day seven. Thus, the affiliate serves to cloud the true nature of the loop (or linesharing UNE) provisioning process, insulating the incumbent LEC from providing a meaningful opportunity for competitive LECs to compete with the affiliate, all in the name of "parity." Given this reality, and the fact that both Verizon and SBC have sought the immediate termination of the separate affiliates, the Commission cannot rely on such affiliates as a replacement for UNE provisioning intervals.

**Conclusion**

The Commission has worked hard for six years to bring the benefits of competition to all consumers in this country. In particular, the Commission has actively fostered competition in the advanced services arena, in furtherance of both the market-opening provisions of the Act and the congressional mandate of section 706 of the Act. As the Commission has repeatedly recognized, the loop unbundling and OSS obligations of section 251(c)(3) are at the very core of those market-opening provisions. It is now time for the Commission to look at six years of competitive experience and take immediate action to close the gaps in its procompetitive rules. These gaps – the lack of specific UNE intervals, performance metrics, and self-executing measures – are denying more and more consumers competitive broadband services every day. By adopting

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the future to take into account changes in Commission or state rules." 47 CFR § 51.301(c)(3).

meaningful UNE provisioning intervals and associated penalties, the Commission will take a great step towards ensuring the further growth and development of the competitive broadband industry, an industry dedicated to meeting the demands of consumers for low-cost, high-speed, innovative broadband services.

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Respectfully submitted,

_/s/ Jason D. Oxman_____

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# APPENDIX A – PERFORMANCE METRICS

## Covad Communications Company

## CC Docket No. 01-318

# Percent FOC Received on Time

## FCC-POI-1

**Purpose:**
Measures the success rate of the FOC delivery portion of the provisioning process. Used to identify issues that cause delays in the preorder provisioning process.

**Description:**

**FCC-POI-1A:** Measures the successful delivery of the FOC for UNE-P orders. Includes all service orders designated for POTS service.
**FCC-POI-1B:** Measures the successful delivery of the FOC for Line Share DSL orders. Includes all service orders designated as Line Share products.
**FCC-POI-1C:** Measures the successful delivery of the FOC for all unloaded 2-wire unbundled loops. Includes all service orders designated as 2W-UBL, and all IDSL service orders.
**FCC-POI-1D:** Measures the successful delivery of the FOC for all loaded 2-wire unbundled loops. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:**
- Includes business days only in the interval calculation
- A "day" is defined as a true 24-hour day, from 12 midnight to 12 midnight

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percent |
| **Product Reporting:** As identified above. | **Target:** 98% Success |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. Service Order Placed Date<br>2. FOC Delivered Date<br>3. FOC Interval<br>4. Standard Interval per Product<br>5. Supplement Date<br>6. Success Flag<br>7. FOC Delivered Count<br>8. Product Type<br>**Amplifying Data:**<br>1. PON<br>2. Service Order Number<br>3. FOC Date | **FOC Interval** = (FOC Delivered Date – Service Order Placed Date) *IN BUSINESS DAYS*<br>**OR**<br>**FOC Interval** = (FOC Delivered Date – Last Supplemental Service Order Placed Date) *IN BUSINESS DAYS*<br>**Success Flag** = IF ((FOC Interval ≤ Standard Interval for Product) Then 1) Else 0<br>**% FOC Received on Time** = Σ (Success Flag) / Σ (FOCs Delivered) |

**Product Delivery Standards:**

| | |
|---|---|
| **FCC-POI-1A:** 24 Hours | **FCC-POI-1B:** 24 Hours |
| **FCC-POI-1C:** 48 Hours | **FCC-POI-1D:** 48 Hours |

# Percent Service Order Reject on Time

## FCC-POI-2

**Purpose:**
Measures the success rate of the reject delivery portion of the provisioning process. Used to identify issues that cause delays in the preorder provisioning process. This is an exception measure, used to monitor orders that do not flow through the normal provisioning process.

**Description:**

**FCC-POI-2A:** Measures the successful delivery of the reject notice for UNE-P orders. Includes all service orders designated for POTS service.
**FCC-POI-2B:** Measures the successful delivery of the reject notice for Line Share DSL orders. Includes all service orders designated as Line Share products.
**FCC-POI-2C:** Measures the successful delivery of the reject notice for all unloaded 2-wire unbundled loops. Includes all service orders designated as 2W-UBL, and all IDSL service orders.
**FCC-POI-2D:** Measures the successful delivery of the reject notice for all loaded 2-wire unbundled loops. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:**
- Includes business days only in the interval calculation
- A "day" is defined as a true 24-hour day, from 12 midnight to 12 midnight

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percent |
| **Product Reporting:** As identified above. | **Target:** 98% Success |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. Service Order Placed Date<br>2. Reject Delivered Date<br>3. Reject Interval<br>4. Standard Interval per Product<br>5. Supplement Date<br>6. Success Flag<br>7. Reject Delivered Count<br>8. Product Type<br>**Amplifying Data:**<br>1. PON<br>2. Service Order Number | **Reject Interval** = (Reject Delivered Date – Service Order Placed Date) *IN BUSINESS DAYS*<br>**OR**<br>**Reject Interval** = (Reject Delivered Date – Last Supplemental Service Order Placed Date) *IN BUSINESS DAYS*<br>**Success Flag** = IF (Reject Interval ≤ Standard Interval for Product) Then 1) Else 0<br>**% Reject Received on Time** = Σ (Success Flag) / Σ (Rejects Delivered) |

**Product Delivery Standards:**

| | |
|---|---|
| **FCC-POI-2A:** 12 Hours | **FCC-POI-2B:** 12 Hours |
| **FCC-POI-2C:** 24 Hours | **FCC-POI-2D:** 24 Hours |

# Percent Slid FOCs

## FCC-POQ-1

**Purpose:**
Track and measure the percentage of times an ILEC changes the Firm Order Commitment Date. Designed to encourage the delivery of a valid FOC. Excludes Customer Requested Due Date changes.

**Description:**

**FCC-POQ-1A:** Measures the percentage of UNE-P orders with more than one FOC. Includes all service orders designated for POTS service.
**FCC-POQ-1B:** Measures the percentage of Line Share DSL orders with more than one FOC. Includes all service orders designated as Line Share products.
**FCC-POQ-1C:** Measures the percentage of unloaded 2W-UBL service orders with more than one FOC. Includes all service orders designated as 2W-UBL, and all IDSL service orders.
**FCC-POQ-1D:** Measures the percentage of loaded 2-wire unbundled service orders with more than one FOC. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:**
- Customer requested due date change.

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percent |
| **Product Reporting:** As identified above. | **Target:** ≤ 3% Slid FOC |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. # Orders with FOC<br>2. # Orders with >1 FOC<br>3. Orders with FOC Count<br>4. Slid Flag<br>5. FOC Received Date<br>6. Product Type<br>**Amplifying Data:**<br>1. PON<br>2. Service Order Number<br>3. Supplement Date<br>4. First FOC Date<br>5. Last FOC Date | **Slid Flag** = IF ((FOC > 1) Then 1) Else 0<br>**% Slid FOC** = Σ (Slid Flag) / Σ (Orders with FOC ) |

# Percent FOC In Interval

## FCC-POQ-2

**Purpose:**
Measure the percentage of FOCs offered whose intervals are less than or equal to the standard interval for the product. Used to ensure the delivery of a valid FOC.

**Description:**

**FCC-POQ-2A:** Measures the percentage of FOCs for UNE-P orders with an offered interval less than or equal to the standard POTS interval. Includes all service orders designated for POTS service.
**FCC-POQ-2B:** Measures the percentage of FOCs for Line Share DSL orders with an offered interval less than or equal to the standard Line Share interval. Includes all service orders designated as Line Share products.
**FCC-POQ-2C:** Measures the percentage of FOCs for unloaded 2W-UBL service orders with an offered interval less than or equal to the standard unloaded 2W-UBL interval. Includes all service orders designated as unloaded 2W-UBL, and all IDSL service orders.
**FCC-POQ-2D:** Measures the percentage of FOCs for loaded 2-wire unbundled service orders with an offered interval less than or equal to the standard loaded 2W-UBL interval. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:**
- Customer requested due date outside interval
- Includes business days only in the interval calculation
- A "day" is defined as a true 24-hour day, from 12 midnight to 12 midnight

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percent |
| **Product Reporting:** As identified above. | **Target:** 95% FOCs in Interval |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. Product Type<br>2. Standard Interval for Product<br>3. Conditioning Status<br>4. Actual Interval Offered<br>5. Customer SUP Date<br>6. Last FOC<br>7. Valid Interval Flag<br>8. Service Order Placed Date<br>9. Orders with FOC Count<br>**Amplifying Data:**<br>1. PON<br>2. Service Order Number | **Actual Interval Offered** = (Last FOC) – (Service Order Placed Date)<br><br>**Valid Interval Flag** = IF ((Actual Interval Offered ≤ Standard Interval for Product) Then 1) Else 0<br><br>**% FOC in Interval** = Σ (Valid Interval Flag) / Σ (Orders with FOC) |

**Product Delivery Standards:**

| | |
|---|---|
| **FCC-POI-2A:** 1 Business Days | **FCC-POI-2B:** 1 Business Days |
| **FCC-POI-2C:** 3 Business Days | **FCC-POI-2D:** 5 Business Days |

# Average Delivery Interval

## FCC-OPI-1

**Purpose:**
Measure the average amount of time in business days that elapses from service order placed to loop delivery. A loop is considered delivered when the ILEC has completed the work necessary to provide a DSL quality product to the CLEC AND the CLEC has accepted that delivery. This interval will be defined as the ILEC service delivery interval.

**Description:**

**FCC-OPI-1A:** Measures the average service delivery interval for UNE-P orders. Includes all service orders designated for POTS service.
**FCC-OPI-1B:** Measures the average service delivery interval for Line Share DSL orders. Includes all service orders designated as Line Share products.
**FCC-OPI-1C:** Measures the average service delivery interval for unloaded 2W-UBL service orders. Includes all service orders designated as unloaded 2W-UBL, and all IDSL service orders.
**FCC-OPI-1D:** Measures the average service delivery interval for loaded 2-wire unbundled service orders. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:**
- Customer requested due date outside interval
- Includes business days only in the interval calculation
- A "day" is defined as a true 24-hour day, from 12 midnight to 12 midnight
- Cancelled orders EXCEPT those that are cancelled after due date.

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Average |
| **Product Reporting:** As identified above. | **Target:** Average interval on or below product delivery standards |

| | |
|---|---|
| **Fields Required for Calculation:**<br>1. Product Type<br>2. Standard Interval for Product<br>3. Conditioning Status<br>4. Service Order Complete Date<br>5. Customer SUP Date<br>6. Service Order Placed Date<br>7. Average Service Order Interval<br>8. Service Order Complete Flag<br>**Amplifying Data:**<br>1. PON<br>2. Service Order Number | **Calculations:**<br><br>**Average Service Order Interval =**<br>Σ Business Days (Service Order Complete Date) – (Service Order Placed Date) / Σ(Service Orders Completed) |

**Product Delivery Standards:**

| | |
|---|---|
| **FCC-OPI-1A:** 1 Business Days | **FCC-OPI-1B:** 1 Business Days |
| **FCC-OPI-1C:** 3 Business Day | **FCC-OPI-1D:** 5 Business Days |

# Percent Joint Acceptance Test of UBL

## FCC-OPQ-1

**Purpose:**
Measure the percentage of 2-wire unbundled loops delivered that go through the Joint Acceptance Test process. Higher levels of testing will improve the quality of loop delivered. An order will be considered acceptance tested when the parameters established for JAT (test documented, on-hold time exceeded, etc.) are met. Sub-metric will be % JAT Passed.

**Description:**

**FCC-OPQ-1A:** Not applicable to this metric
**FCC-OPQ-1B:** Not applicable to this metric
**FCC-OPQ-1C:** Measures the percentage of unloaded 2W-UBL service orders joint acceptance tested. Includes all service orders designated as unloaded 2W-UBL, and all IDSL service orders.
**FCC-OPQ-1D:** Measures the percentage of loaded 2-wire unbundled service orders joint acceptance tested. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:** None

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percentage |
| **Product Reporting:** As identified above. | **Target:** 95% |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. Product Type<br>2. Conditioning Status<br>3. Service Order Complete Date<br>4. Service Order Placed Date<br>5. Service Order Complete Flag<br>6. JAT Flag<br>7. JAT Date<br>**Amplifying Data:**<br>1. PON<br>2. Service Order Number<br>3. JAT Pass Flag | **% UBL Joint Acceptance Tested** = Σ (JAT Flag) / Σ(2-Wire UBL Service Orders Completed)<br><br>**% JAT Passed** = Σ(JAT Pass Flag) / Σ(JAT Flag)<br><br>**JAT Flag** = IF(JAT Test) OR (Meet Terms of JAT) THEN 1, ELSE 0 |

# Percent Commitment Met

## FCC-OPQ-2

**Purpose:**
Measure the percentage of time the service delivery interval is within the promised delivery interval. A loop is considered delivered when the ILEC has completed the work necessary to provide a DSL quality product to the CLEC AND the CLEC has accepted that delivery.

**Description:**

**FCC-OPQ-2A:** Measures the percentage commitment met for UNE-P orders. Includes all service orders designated for POTS service.
**FCC-OPQ-2B:** Measures the percentage commitment met for Line Share DSL orders. Includes all service orders designated as Line Share products.
**FCC-OPQ-2C:** Measures the percentage commitment met for unloaded 2W-UBL service orders. Includes all service orders designated as unloaded 2W-UBL, and all IDSL service orders.
**FCC-OPQ-2D:** Measures the percentage commitment met for loaded 2-wire unbundled service orders. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:** None

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percentage |
| **Product Reporting:** As identified above. | **Target:** 95% |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. Product Type<br>2. Promised Delivery Interval<br>3. Conditioning Status<br>4. Service Order Complete Date<br>5. Customer SUP Date<br>6. Service Order Placed Date<br>7. Service Order Interval<br>8. Service Order Complete Flag<br>9. FOC Date<br>10. Delivery Within Interval Flag<br>**Amplifying Data:**<br>1. PON<br>2. Service Order Number | **Promised Delivery Interval** =<br>(FOC Date) – (Service Order Placed Date)<br><br>**Service Order Interval** = (Service Order Complete Date) – (Service Order Placed Date)<br><br>**Delivery Within Interval Flag** = IF (Service Order Interval) ≤ (Promised Delivery Interval) THEN 1, ELSE 0<br><br>**% Commitment Met** = Σ(Delivery Within Interval Flag) / Σ(Service Order Complete Flag) |

# Percent Interval Met

## FCC-OPQ-3

**Purpose:**
Measure the percent the standard service delivery interval is met. A loop is considered delivered when the ILEC has completed the work necessary to provide a DSL quality product to the CLEC AND the CLEC has accepted that delivery.

**Description:**

**FCC-OPI-1A:** Measures the percent the standard service delivery interval is met for UNE-P orders. Includes all service orders designated for POTS service.
**FCC-OPI-1B:** Measures the percent the standard service delivery interval is met for Line Share DSL orders. Includes all service orders designated as Line Share products.
**FCC-OPI-1C:** Measures the percent the standard service delivery interval is met for unloaded 2W-UBL service orders. Includes all service orders designated as unloaded 2W-UBL, and all IDSL service orders.
**FCC-OPI-1D:** Measures the percent the standard service delivery interval is met for loaded 2-wire unbundled service orders. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:**
- Customer requested due date outside interval
- Includes business days only in the interval calculation
- A "day" is defined as a true 24-hour day, from 12 midnight to 12 midnight

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percentage |
| **Product Reporting:** As identified above. | **Target:** 95% |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. Product Type<br>2. Standard Interval for Product<br>3. Conditioning Status<br>4. Service Order Complete Date<br>5. Customer SUP Date<br>6. Service Order Placed Date<br>7. Service Order Interval<br>8. Service Order Complete Flag<br>9. Interval Success Flag<br>**Amplifying Data:**<br>1. PON<br>2. Service Order Number | **Service Order Interval** =<br>Σ (Business Days (Service Order Complete Date) – (Service Order Placed Date)) / Σ(Service Orders Completed)<br><br>**Interval Success Flag** = IF (Service Order Interval ≤ Standard Interval for Product) THEN 1, ELSE 0<br><br>**% Interval Met** = Σ(Interval Success Flag) / Σ(Service Order Complete Flag) |

**Product Delivery Standards:**

| | |
|---|---|
| **FCC-OPQ-3A:** 1 Business Days | **FCC-OPQ-3B:** 1 Business Days |
| **FCC-OPQ-3C:** 3 Business Day | **FCC-OPQ-3D:** 5 Business Days |

# Mean Time to Repair

## FCC-MRI-1

**Purpose:**
Measure the interval for all repair tickets issued to the service provider.

**Description:**

**FCC-MRI-1A:** Measures the repair interval for UNE-P orders. Includes all service orders designated for POTS service.
**FCC-MRI-1B:** Measures the repair interval for Line Share DSL orders. Includes all service orders designated as Line Share products.
**FCC-MRI-1C:** Measures the repair interval for unloaded 2W-UBL service orders. Includes all service orders designated as unloaded 2W-UBL, and all IDSL service orders.
**FCC-MRI-1D:** Measures the repair interval for loaded 2-wire unbundled service orders. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:**
- No Trouble Found

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Average |
| **Product Reporting:** As identified above. | **Target:** Average within standard defined for product |

| | |
|---|---|
| **Fields Required for Calculation:**<br>1. Product Type<br>2. Conditioning Status<br>3. Service Order Complete Date<br>4. Service Order Placed Date<br>5. Service Order Complete Flag<br>6. Trouble Ticket Count<br>7. Trouble Ticket Issued Date(s)<br>8. Trouble Ticket Closed Date(s)<br>9. Repair Interval<br>**Amplifying Data:**<br>1. PON<br>2. Trouble Ticket Number(s) | **Calculations:**<br><br>**Repair Interval** = (Trouble Ticket Closed Date – Trouble Ticket Issued Date)<br><br>**Mean Time to Repair** = Σ(Repair Interval) / Trouble Ticket Count |

**Product Delivery Standards:**

| | |
|---|---|
| **FCC-MRI-1A:** 4 Hours | **FCC-MRI-1B:** 4 Hours |
| **FCC-MRI-1C:** 24 Hours | **FCC-MRI-1D:** 24 Hours |

# % Repair Complete in X

## FCC-MRI-2

**Purpose:**
Track the percentage of repair tickets completed within specified intervals. This will identify repair time increases.

**Description:**

**FCC-MRI-2A:** Measures the percentage of repair tickets completed within specified intervals for UNE-P orders. Includes all service orders designated for POTS service.
**FCC-MRI-2B:** Measures the percentage of repair tickets completed within specified intervals for Line Share DSL orders. Includes all service orders designated as Line Share products.
**FCC-MRI-2C:** Measures the percentage of repair tickets completed within specified intervals for unloaded 2W-UBL service orders. Includes all service orders designated as unloaded 2W-UBL, and all IDSL service orders.
**FCC-MRI-2D:** Measures the percentage of repair tickets completed within specified intervals for loaded 2-wire unbundled service orders. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:** None

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percentage |
| **Product Reporting:** As identified above. | **Target:** Tracking metric |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. Product Type<br>2. Conditioning Status<br>3. Standard Repair Intervals<br>4. Service Order Placed Date<br>5. Service Order Complete Flag<br>6. Trouble Ticket Count<br>7. Trouble Ticket Issued Date(s)<br>8. Trouble Ticket Closed Date(s)<br>9. Repair Interval<br>10. Repair Within Standard Interval Flag<br>**Amplifying Data:**<br>1. PON<br>2. Trouble Ticket Number(s) | **Repair Interval** = (Trouble Ticket Closed Date – Trouble Ticket Issued Date)<br><br>**<u>Repair Within Standard Interval Flag</u>**<br><br>= IF(Repair Interval ≤ Standard Repair Interval (X)) THEN 1, ELSE 0<br><br>**% Repair Complete in X** = Σ(Repair Within Standard Interval Flag) / Σ(Trouble Ticket Count) |

**Standard Repair Intervals:**
NOTE: These values would be substituted for X in the "Repair Within Standard Interval Flag" calculation.

≤ 4 Hours, ≤ 24 Hours, > 24 Hours

# Installation Quality

## FCC-MRQ-1

**Purpose:**
Measure the quality of loop installation by identifying service failures within intervals close to installation completion.

**Description:**

**FCC-MRQ-1A:** Measures the loop quality for UNE-P orders. Includes all service orders designated for POTS service.
**FCC-MRQ-1B:** Measures the loop quality for Line Share DSL orders. Includes all service orders designated as Line Share products.
**FCC-MRQ-1C:** Measures the loop quality for unloaded 2W-UBL service orders. Includes all service orders designated as unloaded 2W-UBL, and all IDSL service orders.
**FCC-MRQ-1D:** Measures the loop quality for loaded 2-wire unbundled service orders. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:**
- NTF Tickets that include no additional TT within interval

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percentage |
| **Product Reporting:** As identified above. | **Target:** 2% |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. Product Type<br>2. Conditioning Status<br>3. Service Order Complete Flag<br>4. Service Order Complete Date<br>5. Trouble Ticket Count<br>6. Trouble Ticket Issued Date(s)<br>7. Trouble Ticket Closed Date(s)<br>8. Trouble Interval<br>9. I-7 Flag<br>10. I-30 Flag<br>**Amplifying Data:**<br>1. PON<br>2. Trouble Ticket Number(s) | **Trouble Interval** = (Trouble Ticket Issued Date) – (Service Order Complete Date)<br><br>**I-7 Flag** = IF(Trouble Interval $\leq$ 7) THEN 1, ELSE 0<br><br>**I-30 Flag** = IF(Trouble Interval $\leq$ 30) THEN 1, ELSE 0<br><br>**I-7** = $\Sigma$(I-7 Flag) / $\Sigma$(Service Order Complete Flag)<br><br>**I-30** = $\Sigma$(I-30 Flag) / $\Sigma$(Service Order Complete Flag) |

# Repeat Trouble in 30 Days

## FCC-MRQ-2

**Purpose:**
Measure the percentage of circuits with chronic trouble by measuring the number of trouble tickets issued in 30 days on a single service order.

**Description:**

**FCC-MRQ-2A:** Measures the percentage of UNE-P orders with chronic trouble. Includes all service orders designated for POTS service.
**FCC-MRQ-2B:** Measures the percentage of Line Share DSL orders with chronic trouble. Includes all service orders designated as Line Share products.
**FCC-MRQ-2C:** Measures the percentage of unloaded 2W-UBL service orders with chronic trouble. Includes all service orders designated as unloaded 2W-UBL, and all IDSL service orders.
**FCC-MRQ-2D:** Measures the percentage of loaded 2-wire unbundled service orders with chronic trouble. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:**
- NTF Tickets within the month (Calendar)

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percentage |
| **Product Reporting:** As identified above. | **Target:** 3% |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. Product Type<br>2. Conditioning Status<br>3. Repaired Service Orders<br>4. Service Order Complete Date<br>5. Trouble Ticket Count<br>6. Trouble Ticket Issued Date(s)<br>7. Trouble Ticket Closed Date(s)<br>8. Failure Interval<br>9. T-30 Flag<br>**Amplifying Data:**<br>1. PON<br>2. Trouble Ticket Number(s) | **Failure Interval** = TT2(Trouble Ticket Issued Date) – TT1(Trouble Ticket Issued Date)*<br><br>**T – 30 Flag** = IF(Failure Interval ≤30)THEN 1, ELSE 0<br><br>**T – 30** = Σ(T-30 Flag) / Σ(Repaired Service Orders)<br><br>* TT2 and TT1 refer to trouble tickets. These are trouble tickets on orders that have multiple trouble tickets, where the date of the older ticket is subtracted from the next ticket on the service order. |

# % Trouble Ticket Rate

## FCC-MRQ-3

**Purpose:**
Measure the percentage of circuits with trouble by measuring the number of trouble tickets issued in the reporting month. Measurement reflects the overall network quality.

**Description:**

**FCC-MRQ-3A:** Measures the percentage of UNE-P orders with trouble. Includes all service orders designated for POTS service.
**FCC-MRQ-3B:** Measures the percentage of Line Share DSL orders with trouble. Includes all service orders designated as Line Share products.
**FCC-MRQ-3C:** Measures the percentage of unloaded 2W-UBL service orders with trouble. Includes all service orders designated as unloaded 2W-UBL, and all IDSL service orders.
**FCC-MRQ-3D:** Measures the percentage of loaded 2-wire unbundled service orders with trouble. Includes all service orders that require conditioning prior to provisioning.

**Exclusions / Exceptions:**
- NTF Tickets

| | |
|---|---|
| **Reporting Period:** One Month | **Unit of Measure:** Percentage |
| **Product Reporting:** As identified above. | **Target:** 2% |

| **Fields Required for Calculation:** | **Calculations:** |
|---|---|
| 1. Product Type<br>2. Conditioning Status<br>3. Repaired Service Orders<br>4. Trouble Ticket Issued Date(s)<br>5. Order Status<br>6. LIS Flag<br>**Amplifying Data:**<br>1. PON<br>2. Trouble Ticket Number(s) | **LIS Flag** = IF(Order Status = Connected)THEN 1, ELSE 0<br><br>**% Trouble Ticket Rate** = Σ(Repaired Service Orders) / Σ(LIS Flag) |