ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

January 22, 2002

VIA ELECTRONIC FILING

Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Performance Measurements and Standards for Interstate Special Access Services; CC Docket Nos. 01-321, 00-51, 98-147, 96-98, 98-141, 96-149, 00-229, and RM 10329

Dear Ms. Salas:

Attached are comments of the Association for Local Telecommunications Services ("ALTS") for filing in the above-captioned proceedings.

Sincerely,

/s/

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

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

COMMENTS OF THE
ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

The Association for Local Telecommunications Services (ALTS) hereby files its comments in the above-referenced proceedings in response to the Commission's Notice of Proposed Rulemaking (*Notice*) regarding the adoption of performance metrics for interstate special

access services. The FCC has sought comment on whether it should adopt a select group of performance measurements and standards for evaluating incumbent local exchange carrier (ILEC) performance in the provisioning of special access services. The *Notice* rightly recognizes that special access services are often necessary to connect an end user with a CLEC's point of presence. Quite often these special access services are used by CLECs in lieu of unbundled network elements (UNEs) because of uncertainty over UNE availability, inadequate OSS interfaces for UNE provisioning, ILEC-imposed use restrictions, ILEC refusals to construct facilities or attach necessary electronics, or other ILEC policies that preclude UNE access.[2] ALTS contends that in order to establish effective safeguards against unjust and unreasonable practices in the provision of special access, the FCC must adopt a limited number of performance measurements and standards along with self-effectuating, graduated penalties for incumbent local exchange carrier (ILEC) noncompliance.

BACKGROUND AND SUMMARY

There can be no doubt that ILEC provisioning of special access services is characterized by delay, poor quality, and discrimination.[3] Adoption of measurements and

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2 Due to typical price differentials and the existence of state performance standards for UNE provisioning and the lack of state standards for special access provisioning, CLECs would obviously prefer to obtain UNE equivalents to special access services. Due to ILEC provisioning policies, however, this is a practical impossibility, and CLECs are often compelled to purchase UNE equivalents as special access.

3 Within recent months, one section 208 complaint concerning special access has been filed (Letter from Jennifer M. Kashatus, Kelley Drye & Warren (counsel for Cable & Wireless) to Alexander P. Starr, Enforcement Bureau, Federal Communications Commission (filed Sept. 4, 2001) (arguing that Verizon's special access provisioning: (i) is not done within the established installation dates; (ii) is unjust and unreasonable in violation of section 201(b) of the Act; and (iii) discriminates against Cable & Wireless in favor of Verizon's own retail operations in violation of sections 201, 251(g), and 272 of the Act) and a multitude of *ex partes* have been filed by competitors on the subject of special access: Letter from Lisa B. Smith, WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission, (filed July 12, 2001) (*WorldCom July 12 Ex Parte*); Letter from (continued….)

standards for special access services would undoubtedly assist the Commission in ensuring that these services are provisioned in a just and reasonable manner. Without such measures, it is simply too hard for a CLEC to prove it is receiving inadequate provisioning, too easy for an ILEC to deny that it is provisioning special access services in an unjust and unreasonable manner, and too easy for regulators to avoid imposing penalties on an ILEC for unjust and unreasonable provisioning based on lack of sanctioned provisioning standards and an inability to obtain necessary evidence.

For years, ALTS has insisted that a set of self-executing performance metrics and standards for provisioning of both unbundled network elements and special access services will greatly improve the ability of CLECs to obtain the necessary inputs to provision competitive telecommunications services. In 1996, ALTS requested the FCC include such self-executing performance measurements and standards in the *Local Competition First Report and Order* and then immediately asked the FCC to reconsider its decision not to do so. On May 17, 2000, ALTS petitioned the Commission to take numerous steps relating to timely and nondiscriminatory provisioning of loops, and specifically requested the Commission apply its

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Daniel Gonzalez, XO, to Magalie Roman Salas, Secretary, Federal Communications Commission (filed August 24, 2001) (*XO Ex Parte*); Letter from Lisa B. Smith, WorldCom, to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 96-98 (filed Aug. 6, 2001) (*WorldCom August 6 Ex Parte*); Letter from Jonathan Lee, CompTel, to Magalie Roman Salas, Secretary, Federal Communications Commission (filed August 20, 2001) (*CompTel Ex Parte*); *AT&T Corp. Petition to Establish Performance Standards, Reporting Requirements, and Self-Executing Remedies Needed to Ensure Compliance by ILECs with their Statutory Obligations Regarding the Provision of Interstate Special Access Services*, RM 10329 (filed Oct. 30, 2001) (*AT&T Petition*). *See also, Proceeding on Motion of the Commission to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc et al.*, Opinion and Order Modifying Special Services Guidelines for Verizon New York Inc., Conforming Tariff, and Requiring Additional Performance Reporting, State of New York Public Service Commission, Cases 00-C-2051, 92-C-0665 (June 15, 2001) at 6 (finding that Verizon provides special access services in a discriminatory manner).

nondiscrimination rules to ensure timely and efficient provisioning of special access circuits.[4] ALTS contended that the Commission should establish, among other things, certain and quantifiable remedies, including self-executing monetary penalties, for noncompliance with provisioning rules.[5]

The process for acquiring and utilizing any ILEC service or UNE is well understood: pre-ordering, ordering, installation, maintenance, repair and billing. With the possible exception of billing, each of these functions constitutes an opportunity for ILEC discrimination, and thus each needs specific metrics. This has been recognized by the FCC in the *Notice*, and by each of the states that have adopted metrics for ILEC services. ALTS proposes that the FCC adopt a set of performance metrics and standards that tracks the most essential and competitively significant ILEC special access functionalities. The performance measurements and standards proposed by the Joint Competitive Industry Group are a reasonable starting point and should be adopted by the FCC immediately. These metrics are the result of years of experience and analysis as to the various ways in which ILECs can and have discriminated against CLECs seeking to purchase special access. These metrics and standards are designed to detect and curtail unjust, unreasonable and discriminatory ILEC provisioning practices.

ALTS believes that, rather than delaying this proceeding in an attempt to perfect the

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[4] *Petition of Association for Local Telecommunications Services for Declaratory Ruling: Broadband Loop Provisioning, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98; *Application for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation Transferor to SBC Communications Inc., Transferee*, CC Docket No. 98-141; *Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next Generation Remote Terminals*, NSD-L-48 DA 00-891, May 17, 2000 (ALTS Petition); *Pleading Cycle Established for Comments on ALTS Petition for Declaratory Ruling*: *Loop Provisioning*, CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-00-48, DA 00-114, 15 FCC Rcd 18671 (2000).

measurements, standards and penalties at the outset, it is more important that the FCC quickly adopt appropriate measurements, standards and penalties and establish a process for modifying them over time to meet changing needs in the industry.

I. ADOPTION OF PERFORMANCE MEASUREMENTS AND STANDARDS IS NECESSARY TO ENSURE NONDISCRIMINATION

ALTS believes that it is essential for the FCC to adopt performance metrics for special access services purchased by CLECs because ILECs have an obvious anti-competitive incentive to discriminate against CLECs when providing special access services. ILECs have incentive to raise their rivals' costs, to decrease the quality of rivals' service offerings, and to increase time to deploy competitive services. Properly constructed measurements and standards will enable regulators and industry members to detect such discrimination and, when linked to adequate self-effectuating remedies, might also effectively deter ILECs from engaging in such discrimination.

A. Performance Metrics Are Essential To Ensure Reasonable And Nondiscriminatory Provisioning of Special Access Services

Special access circuits are an essential input of production for CLECs. In many circumstances when CLECs experience persistent problems in gaining access to UNEs, special access is the only practical alternative where they have not constructed their own facilities. CLECs must be able to provide ubiquitous service offerings to customers (*e.g.,* multiple locations of a single bank, including those located in suburban areas). Although some CLECs have constructed "last mile" loop facilities in some areas, this has generally not proven to be an efficient or practical method of competitive entry. This is especially true in the case of offering

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[5] ALTS Petition at 31-2.

competitive service to residential and small and medium business customers. Unlike large ILECs, particularly the Regional Bell Operating Companies (RBOCs), CLECs lack the captive customer base and generally lack the economies of scale to make overbuilding last mile loops an economically viable option. Moreover, CLECs often cannot obtain access to buildings that are connected to the ILEC networks and new construction may take too long for a customer that needs service connected immediately.

The ILECs contend that, under existing law, they are not required to construct new facilities for UNEs and are not required to combine UNEs for CLECs. However, where a CLEC cannot rely on its own loop facilities, new construction (*e.g.*, addition of electronics) and new combinations are often needed for them to serve their customers. Because of the current difficulties in obtaining UNEs under these circumstances, CLECs must be able to obtain special access in a reasonable and nondiscriminatory manner.. Moreover, if and to the extent certain facilities become unavailable to CLECs as UNEs, CLECs will have no choice but to purchase special access from the ILECs.

Additionally, to obtain access to Enhanced Extended Links ("EELs") in many areas, CLECs must first order special access and then convert the circuit to an EEL, thus the FCC should also adopt metrics concerning the conversion of special access facilities to EELs. Several ILECs are blatantly defying the FCC's order that allows such conversions, and the creation of conversion metrics will enable precise identification of the most egregious ILEC practices. Furthermore, the FCC's recent Order denying Net2000's claim alleging Verizon improperly refused to convert EEL-eligible circuits, will significantly increase CLEC reliance on special access circuits because it essentially precludes CLECs from commingling or mixing

access services and UNEs on the same facilities to serve an end user customer.[6] This commingling restriction further compels and perpetuates CLEC dependence on special access and the need for performance measures and standards in the provisioning of special access.

Based on all of these factors, there can be no doubt that ILECs are dominant providers of special access services. Even in New York City, where competition is arguably more developed than anywhere else in the country, CLECs have access to just 0.4 percent of the buildings. The remaining 99.6 percent have access only to ILEC service.[7] Because of their market power in the special access market, ILECs have the incentive and the means to act anti-competitively and discriminate against their competitors. There are currently no effective regulatory safeguards against ILEC service quality discrimination and unjust and unreasonable practices in the provision of special access. Current ARMIS reporting requirements are inadequate to detect and deter this discrimination, ILEC tariffs often include only limited performance measures, and ILECs currently are not required to include standard intervals in their tariffs. Moreover, the Section 271 process plays no role in encouraging quality and timely RBOC provisioning of special access to CLECs because the FCC has not included special access service quality in its review of Section 271 checklist compliance. Thus, the ILECs' incentive to discriminate in the provision of special access is very substantial and almost completely unchecked by regulation.

In the absence of performance measurements and standards, no one – not CLECs, regulators or arbitrators, or even well-intentioned ILEC provisioning agents – knows what is

[6] *Opinion and Order, Net2000 v. Verizon*, EB-00-018, FCC 01-381 (rel. January 9, 2002) (*Net2000 Order*).

just and reasonable provisioning in order to detect and deter ILEC unreasonable discrimination. Performance metrics and remedies will deliver very substantial long-term benefits through increased competition, lower prices, and innovation. These benefits far outweigh any costs of implementing such metrics.

Furthermore, adoption of performance metrics will not impose significant new burdens either on regulators or the industry. In fact, adoption of performance metrics can reduce discrimination merely because a measurement process is in place. Performance measurements create a public record of obligations and oversight and increase the likelihood of detection, which deters bad behavior. Finally, regulatory oversight will be further streamlined through adoption of self-effectuating remedies.

B. ILEC Reporting Obligations Are Vital to Monitoring Performance

The FCC should require that the performance plan include review and monitoring mechanisms that assure the data will be reported in a consistent and reliable manner. Competitors should not bear responsibility for collecting data; however, when competitors do collect and submit data, it should be considered in evaluating an ILECs' performance.

The Commission should adopt procedures for ILEC reporting of special access provisioning similar to those adopted by the states in which BOCs have received Section 271 approval. ILECs should be required to provide monthly reports disaggregated by state. Requiring state-by-state reporting should assist in benchmarking an ILEC's performance in one area versus another area. For those measurements for which the standard is parity, ILECs

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[7] *See, e.g., Opinion and Order Modifying Special Services Guidelines for Verizon New York Inc., Conforming Tariff, and Requiring Additional Performance Reporting*, Case 00-C-2051, Case 92-C-0665, Opinion No. 01-1, at 7-8 (June 15, 2001) ("NYPSC Order").

should be required to report separately on performance provided to (1) their end user customers, (2) their affiliates, (3) unaffiliated carrier customers as a whole, and (4) each separate competitive carrier (with appropriate confidential treatment for individual carrier reports). Finally, the Commission must ensure that the underlying performance data is available to the FCC, independent auditors, and aggrieved carriers, which will help protect against inaccurate performance reporting.

C. Self-Executing Remedies And Penalties Will Reduce Discrimination and The Need for Regulatory Oversight

The FCC should establish self-executing remedies and penalties for failure to meet the established performance standards. At a minimum, the FCC should adopt base forfeiture amounts up to the maximum amount permitted under the statute for failure to meet the standards. These penalties should be designed to ensure that an economically rational incumbent monopolist would rather avoid the penalty than enjoy the benefit to be gained by handicapping its competitors. The goal is to establish penalty or remedy levels that will cause an end to any statistical disparity between CLEC purchases of special access and the purchase (or self-provisioning) of ILEC special access by anyone else. As a policy matter, it makes much more sense for the FCC to risk erring on the side of undue penalties and remedies, and then reducing them over time, than to approach its task from the other direction.

Currently, ILECs can degrade the quality of their competitors' special access without suffering any negative consequences in terms of lost market share. In a competitive market, this would not be the case. In that context, if an ILEC provided poor service quality, it would lose market share and therefore experience lower profits, which would give the ILEC the incentive to improve its service quality. The Commission should attempt to replicate this

dynamic by imposing automatic, self-enforcing financial penalties on ILECs for failure to provide nondiscriminatory special access services to their competitors.

The task of quantifying such remedies is not unprecedented and is common in various commercial settings. For example, most construction contracts include provisioning intervals and provisions for liquidated damages for a party's failure to meet delivery deadlines. Similarly, ILECs should be subject to penalties for failure to comply with special access provisioning and reporting obligations. The triggers for those penalties and the amount of penalties could readily be modeled after a solid state Performance Assurance Plan (PAP) design such as the one adopted in New York.

Carriers should also be eligible for full refunds on service charges associated with failure to meet specified performance standards. These remedies should come in the form of monthly aggregate payments to the aggrieved CLEC rather than in the form of bill credits. Remedies should apply to all carriers' bills where the ILEC fails to meet the relevant standard for carriers as a whole. Where service is particularly poor for a specific carrier customer, the remedy should be higher for that carrier than for other carriers. Moreover, in the case of both the all-carrier remedies and the carrier-specific remedies, repeated failures to meet performance standards should result in higher amounts of remedies.

Such financial penalties should increase the cost of discrimination, but they may not be sufficient by themselves to deter ILEC anti-competitive behavior completely. The Commission must therefore establish a presumption that, if an ILEC fails to meet a performance standard either three months in a row or in four out of six months, the Commission will issue a notice of apparent liability and seek to impose forfeitures pursuant to Section 503 of the Act. The Commission should issue such a notice unless the ILEC has missed the relevant performance

standard in these cases by only a statistically insignificant amount. The level of the forfeiture should be calibrated to correspond with the degree to which the ILEC has missed the relevant standard and the degree to which the ILEC has a missed performance standards in the past.

Special rules should also be established to address ILEC failures to comply with the reporting requirements. No obligation imposed under this regime should be viewed as more critical than reporting. If an ILEC fails to report the proper data or fails to report it accurately, the entire performance regime will be undermined. The Commission should therefore require that ILECs undergo an annual audit of their special access performance reports. The audit should include a comprehensive review of the ILEC's procedures for complying with the business reporting guidelines, such as business rules and exclusions. In addition, the auditors should review the data reported for accuracy. This can be done by reviewing the data reported during a representative time period (three consecutive months, for example) in a single state chosen at random for each of the measurements. Furthermore, a CLEC should be allowed to petition the Commission to require a special audit of data where the CLEC can make a *prima facie* case that the data for a particular measurement in a particular state is unreliable. In any case where an ILEC is found to have failed to comply with the measurement rules (*e.g.,* failed to properly apply business rules, exclusion rules, etc. set forth in a particular measurement requirement) or failed to report accurate data, the Commission should aggressively seek forfeiture penalties.

None of these remedies should preclude an aggrieved carrier from bringing separate legal action either before the FCC or in federal court to recover compensatory and punitive damages. Carrier should continue to be able to bring a separate 208 complaint for poor special access service quality or bring a tort, contract or antitrust claim to a court of competent

jurisdiction. Even when all of the mechanisms described herein are applied, it is still unlikely that the ILECs' incentives for discrimination will completely disappear. ILECs have powerful incentives to degrade the quality of special access sold to competitors and, unlike with UNEs, there is no Section 271 process that gives ILECs the incentive to cooperate in providing special access. It is also unlikely that any automatic financial penalties imposed on ILECs will fully compensate the carrier customers, especially where the service failure is severe. Thus, aggrieved carriers must have alternate means of addressing their claims.

D. The Commission Has Authority and Precedent To Adopt Special Access Performance Metrics and Self-Executing Remedies

Adoption of special access performance metrics and self-enforcing penalties is fully within the FCC's authority and consistent with FCC precedent. The FCC has clear authority pursuant to Sections 201(b) and 202(a) to establish regulations designed to prevent unjust and unreasonable charges and practices and to prevent unjust and unreasonable discrimination. The FCC has imposed analogous requirements in the UNE/collocation context based on unjust and unreasonable language that is exactly the same as the language in 201(b). The FCC has authority under Title V to order forfeitures and compensation to other carriers and under Section 205 to order refunds. Furthermore, the FCC has mandated that specific performance metrics and refunds be included in ILEC special access tariffs.

According to section 202(a), "[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communications service, directly or

indirectly, by any means or device."[8] The ILECs need regulatory incentive to provide interstate special access service to their competitors on the same terms and conditions under which the ILECs provide special access to their end users and affiliates. There can be no question that the interstate special access "services" provided to the ILECs' competitors is "like" the interstate "services" provided to its end users and affiliates. Moreover, the ILEC performs the same provisioning and maintenance and repair "services" for all interstate special access. Thus, the FCC clearly has the authority under Section 202(a) to ensure that the ILECs do not perform these functions in an unreasonably discriminatory fashion. The rules proposed herein set standards for performance that are consistent with the meaning of "unjust and unreasonable discrimination" in Section 202(a).

Section 205(a) of the Act states that if, "after full opportunity for hearing upon a complaint . . . the Commission shall be of the opinion that any . . . practice of any carrier or carriers is or will be in violation of any of the provisions of this Act, the Commission is authorized and empowered to determine and prescribe what . . . practice is or will be just, fair, and reasonable."[9] Section 403 of the Act gives the Commission the authority to initiate a proceeding, on its own motion, "as to any matter or thing . . . concerning which any question may arise under any provision of this Act."[10] That section goes on to state that the "Commission shall have the same powers and authority to proceed with any inquiry instituted

[8] 47 U.S.C. § 202(a).

[9] 47 U.S.C. § 205(a).

[10] 47 U.S.C. § 403.

on its own motion as though it had been appealed to by complaint."[11] Since the level of special access quality is certainly a matter concerning which a "question may arise" under Section 202(a), the Commission may initiate a proceeding under Section 403 in which it has all the authority it would have if a complaint had been filed. Under Section 205(a), that authority includes the power to prescribe carrier practices after full opportunity for hearing. Thus Sections 205(a) and 403 grant the FCC the authority to establish performance standards for special access and to require that ILECs include performance measures and standards in their special access tariffs.

The Commission also has the authority to require that ILECs include commitments to report on their performance and make payments to other carriers when those reports indicate that service has fallen to the level that would result in unjust and unreasonable discrimination. Specifically, under Section 4(i) of the Communications Act, the FCC has the authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions."[12] That provision could certainly be used to require that ILECs include in their tariffs provisions that comply with the rules proposed herein. For example, the FCC has in the past required ILECs to charge lower prices for access service of lower quality, even where ILECs did not necessarily incur lower costs when providing the lower quality service. This was exactly the effect of the Commission's decision to set the access charges for the so-called "other common carriers" lower than the MTS-WATS service providers such as AT&T before equal access was

[11] *Id.*

[12] 47 U.S.C. § 154(i).

implemented.[13] Furthermore, the FCC is authorized to order refunds in intercarrier rates pursuant to Section 4(i).[14] In the sharing mechanisms adopted in the earlier ILEC price cap regimes, the Commission also required that refunds be triggered automatically as part of a regulatory scheme. Finally, the Commission has numerous times in the past enacted regulations designed to increase the ILECs' incentives to act in accordance with the requirements of the Communications Act. Both the price cap regime and the Computer II separate affiliate requirements are major examples. In sum, while not all of these regulations were enacted pursuant to section 4(i), they support the view that these mechanisms may be relied upon under Section 4(i) in order to ensure that carriers comply with an underlying statutory mandate such as the one found in Section 202(a).

The FCC should not delegate implementation or enforcement of special access performance requirements to the states. Although the FCC in theory has the authority to delegate at least part of the responsibility for regulating mixed use special access (*e.g.* FCC-state shared responsibility for the rates paid by ISPs to connect to the network, as upheld by the 8th Cir. in SBC v. FCC, and FCC's former policy of allowing the states to regulate interstate foreign exchange service), it would be far more efficient for the FCC to establish a single, national regime with a consistent and uniform national approach to implementation and enforcement.

II. ADOPTED MEASUREMENTS, STANDARDS, AND PENALTIES MUST BE FLEXIBLE AND MUTABLE

[13] *See MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 FCC 2d 834, ¶ 84 (1984) (establishing a 45 percent discount for access purchased by carriers that did not have the benefit of equal access).

[14] *See New England Tel. and Tel. v. FCC*, 826 F.2d 1101 (D.C. Cir. 1987) (upholding refund ordered where rates resulted in a rate of return in excess of the prescribed rate of return).

ALTS believes any measurements and standards adopted by the Commission should be open to modification over time to the extent changes in products or circumstances might warrant modification. No single list of measurements and standards will be perfect for all time. Thus, we believe it is more important for the FCC to adopt a limited set of measures immediately and to establish a process by which these measures and standards may be routinely modified as circumstances dictate. ALTS believes the measures proposed by the Joint Competitive Industry Group are minimally necessary to address most of the current special access provisioning concerns. We believe immediate adoption of these measures and standards is essential to foster competition.

The usefulness of a specific metric can change quickly. For example, changes in the software systems used by ILECs to provide special access can easily require changes in metrics related to that software's functions. Even if the FCC were to adopt metrics that were ideal on their date of adoption, on-going changes in the ILECs' underlying provisioning systems will require tweaks, changes, and sometimes wholesale revisions.

The proper solution to this variability is not to pretend that it does not exist, nor to abandon the entire undertaking, but rather to create a simple process for making modifications to metrics as needed, with minimal regulatory involvement. Congress has already provided such a model via the current section 252 interconnection/arbitration process. Because the section 252 process expressly includes provisions that fall outside section 251 (*see* section 252(a)), the Commission can direct that any party seeking changes to established metrics – perhaps to retire them because they are no longer needed, or perhaps to modify them to capture changes in work flows – is authorized to invoke the provisions of section 252. The likelihood that state metrics will be incorporated with Federal metrics also makes the section 251 process

desirable.

Moreover, the FCC should not use industry workshops to develop requirements and penalties. It would be almost impossible to prevent ILECs from using workshops to delay the proceeding. Although workshops have been useful in some state Section 271 proceedings, the ILECs' incentives were more wholesome in those contexts. ILECs have no incentive to cooperate in this context. Given the FCC's substantial experience with performance requirements and self-executing penalties since the passage of the 1996 Act, workshops are unnecessary. Workshops would impose significant costs on regulators and the industry.

CONCLUSION

As the foregoing demonstrates, few issues are of greater importance to the ALTS members and their ability to compete in telecommunications markets across the country than those that relate to the ILECs' provision of interstate special access service. Indeed, it bears emphasis that the ALTS members have adopted business plans and entry strategies that vary greatly from one another, but, nonetheless, each of these facilities-based companies needs timely access to interstate special access services provided by incumbent LECs in their markets. Until facilities-based competitors for special access services are able to offer a meaningful alternative to the ILECs, it is critical that performance metrics and penalties be adopted to deter these anticompetitive ILEC special access provisioning practices.

Respectfully Submitted,

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