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

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In the matter of	)	
	)	
Performance Measurements and Standards for Unbundled Network Elements and Interconnection	)	CC Docket No. 01-318
	)	
Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance	)	CC Docket No. 98-56
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling	)	CC Docket Nos. 98-147, 96-98, 98-141

COMMENTS OF COX COMMUNICATIONS, INC.

COX COMMUNICATIONS, INC.

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SUMMARY

Cox Communications, Inc. ("Cox") supports the Commission's proposal to adopt performance standards and mechanisms to enforce those standards. Enforceable performance standards are critical to the development of local telephone competition, including the development of facilities-based services such as those Cox provides. The Commission's focus on facilities-based competitors is particularly valuable because those competitors create the most consumer benefits.

This proceeding should set national minimum requirements for all ILECs that provide covered services and functionalities. Standards should be set without resort to a national "collaborative process" that will disadvantage smaller carriers. States should be permitted to adopt more stringent standards in accordance with local needs, but the federal standards should set the national floor for ILEC performance. The Common Carrier Bureau should be delegated authority to modify business rules and the form of reports after the rules are adopted to ensure that the standards remain useful. The Commission should not, however, adopt a specific sunset date, as it is impossible to know when the standards no longer will be necessary.

Cox generally supports the performance measures proposed in the *Notice,* which include several functions that directly affect Cox's ability to compete and that ILECs often perform inadequately. The Commission also should focus on billing issues, the provision of collocation, trunk provisioning and network blockage. In these areas, ILEC failures to perform have created significant competitive issues for Cox that have cost Cox money, time and customers. In the case of collocation, the Commission should be particularly strict in applying its deadlines because ILEC delays can prevent a CLEC from providing any service in the affected area.

The Commission should require ILECs to make monthly reports on performance measures, so that prompt enforcement is possible, and reports should be made on a LATA-by-LATA basis to prevent ILECs from treating one area of a state differently than another. CLECs should have access to relevant ILEC reports for at least two years through ILEC web sites. Enforcement of the standards should be accomplished through forfeitures, which penalize violations; through reductions in charges or refunds to CLECs, which reflect the loss in value for badly-performed services; and through the complaint process, which addresses the costs imposed on CLECs by ILEC actions. These remedies should be cumulative, not exclusive, so that CLECs can be made whole when ILECs do not comply with the standards.

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COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its comments in the Commission's *Notice* in the above-referenced proceeding.[1] Cox strongly supports the Commission's initiative in this proceeding and believes that prompt adoption of performance standards and effective enforcement of those standards is important to the continuing development of efficient local telephone competition.

I. Introduction

Cox is one of the largest facilities-based competitive local exchange carriers ("CLECs") in the country and now provides more than 650,000 access lines in nine states, the overwhelming

[1] Performance Measurement and Standards for Unbundled Network Elements and Interconnection, Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection and Operator Services and Directory Assistance, Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Association for Local Telecommunications Services for Declaratory Ruling, *Notice of Proposed Rulemaking*, CC Docket Nos. 01-318, 98-56, 98-147, 96-98 and 98-141, rel. Nov. 19, 2001 (the *"Notice"*).

majority of which serve residential customers. Cox serves these customers through its own facilities, including loops and switches, that have been deployed through a systematic upgrade of those facilities that began in the mid-1990s, even before the passage of the Telecommunications Act of 1996. Cox's telephone facilities already pass more than three million residences.

Cox applauds the Commission's decision to focus on facilities-based providers. As the Commission has recognized, facilities-based competition brings the most benefit to consumers and the economy.[2] For that reason, to the extent the Commission must choose among various performance measures to adopt and enforce, it should choose those that have the greatest bearing on facilities-based providers.

A focus on facilities-based providers may simplify the Commission's task in this proceeding. As a facilities-based provider, Cox is less dependent on incumbent local exchange carriers ("ILECs") than many other carriers. Nevertheless, Cox still must obtain a variety of services and functionalities from its ILEC competitors so that it can serve its customers. These needs range from collocation and interconnection trunks to simple confirmations that the ILEC has completed the steps necessary for a customer to switch service providers. If these services and functionalities are not provided in a timely, accurate and dependable fashion, it can be much more difficult for Cox to compete in the local telephone marketplace. Thus, from Cox's perspective, it is difficult to overstate the importance of active regulatory oversight to ensure that ILECs meet their obligations. The adoption of performance standards and, equally important, specific measures to enforce those standards is an important element of that regulatory regime.

Adoption of performance standards is an important element in the development of local telephone competition because the relationship between ILECs and CLECs is not a normal

[2] *Notice*, ¶ 5.

business relationship in which the parties interact voluntarily. Rather, ILECs have strong incentives to hurt CLECs in the local telephone marketplace and few incentives to take actions that will benefit their CLEC competitors. In the absence of concrete, specific performance standards and appropriate enforcement mechanisms, ILECs will act on their incentives and perform at the absolute minimum level necessary. In a fully competitive environment where no party has market power, these incentives would not exist because the ILECs would be dependent on the CLECs in the same way that CLECs now depend on ILECs. However, the local telephone market is far from reaching that state, and it is difficult to predict when it will do so. Thus, performance standards for ILECs are necessary if efficient competition is to thrive.

II. General Issues

The *Notice* raises a series of questions concerning the rationale and basic implementation of performance standards. Many of these questions relate to how performance standards should be established and implemented, but do not relate to specific standards. As described below, any national standards should serve as a floor, not a ceiling, and should not be limited arbitrarily by sunset rules or other requirements that might hinder the ability of CLECs to provide efficient competition.

A. The Commission Should Establish Minimum National Performance Standards for All ILECs in This Proceeding.

The fundamental questions in this proceeding are whether the Commission should establish performance standards for ILECs and how those standards should be applied. While the specific standards and enforcement provisions are important, the basic nature of the standards regime is a threshold issue. As described below, Cox submits that the standards should be national in scope; should be set promptly without resort to a "collaborative process" that effectively will exclude smaller carriers; should apply to all ILECs subject to local competition;

and should set minimum requirements but not interfere with any more stringent standards the states may choose.

First, it is most important that the Commission adopt a set of uniform national standards. Establishment of performance standards will further the Commission's goal of fostering facilities-based competition by providing additional certainty and known remedies for ILEC failures to meet their obligations. It also is important for the standards to be national in scope so that CLECs know the minimum obligations of ILECs regardless of where they are doing business. The existence of national standards will greatly facilitate business planning, especially as CLECs expand their operations to new geographic markets.

To the extent the Commission is concerned about the costs of new regulatory requirements for ILECs, and believes it needs to balance these costs against competitive benefits, the best mechanism for doing so is to focus on those performance standards that will produce the most competitive benefits – measures that affect facilities-based providers.[3] These measures, as described more fully below, include basic provisioning standards (such as standards for interconnection trunks) and completion of collocation arrangements. Moreover, because UNE and resale carriers also use many of the same functionalities as facilities-based CLECs, adopting standards that focus on facilities-based carriers will benefit non-facilities-based carriers as well.

In adopting national standards, the Commission should rely on the record in this proceeding, rather than waiting for the creation and conclusion of a national collaborative process like those used by many states. While state-level collaborative processes have been

[3] While Cox recognizes this concern, the Commission also should take into account the likelihood that adoption of performance standards will reduce ILEC regulatory burdens to a certain extent. For instance, because it is likely that compliance with performance standards would be viewed as prima facie evidence that an ILEC is meeting its obligations under Section 251(c), ILECs are likely to be subjected to less litigation concerning their performance. Indeed, the certainty provided by performance standards is likely to be a significant regulatory benefit to CLECs and ILECs alike.

valuable, there is no need to duplicate their work in this proceeding, especially at the cost of further delay in promulgating national standards. Creation of a national collaborative process also will tend to exclude many smaller carriers – both CLECs and ILECs – that lack the resources to participate. Thus, a national collaborative likely would produce results that reflected the perspectives of only the largest carriers, not the industry as a whole.

The standards the Commission adopts should apply to all ILECs providing covered services and functionalities. There is no reason to exclude smaller ILECs that are subject to competition; in fact, to do so would further reduce the likelihood of effective competition developing in smaller and rural communities.[4] ILECs that are not providing services or functionalities covered by the standards should be required to provide certifications to that effect, so that the Commission and CLECs will be able to confirm that no performance reports are due.

It is important for all ILECs subject to local competition to be required to meet the performance standards because all ILECs have the same incentives to hinder the development of local telephone competition. This will be true until ILECs and CLECs operate on equal footing and ILECs find themselves to be dependent on CLECs, but that time is far away. Moreover, the Commission should be particularly vigilant as to the Bell companies in the states where they have obtained Section 271 authority. In those states, the additional incentives for good performance created by Section 271 have been diminished, and so there is increased risk of anticompetitive behavior.

For the reasons described above, however, CLECs should not be required to meet any standards adopted in this proceeding. There is no evidence that CLECs have engaged, or even could engage, in anticompetitive behavior of any sort. Indeed, customers typically blame CLECs

[4] Of course, an ILEC that is subject to an exemption or suspension under Section 251(h) would not be required to meet performance standards or make reports as to services or functionalities it has been exempted from providing.

for any errors or failures, whether or not they are caused by CLEC actions. Consequently, CLECs have every incentive to provide all services and functionalities in a timely, efficient fashion.

Finally, the standards adopted in this proceeding should serve as a starting point for state standards and as a default requirement for all ILECs in any state that has not adopted standards. This division of responsibility best reflects the Commission's national role in these matters. By adopting minimum standards, the Commission can ensure that CLECs will be entitled to specific levels of performance wherever they operate. This increases certainty and, as noted above, simplifies business planning and geographic expansion. At the same time, the Commission should recognize that states may be in a better position to discover particular bottlenecks that hinder the development of local competition or that reduce consumer welfare. Since an ILEC may have particular performance problems specific to its operations in a single state or geographic area, state-specific performance metrics can play an important role in the success of affected CLECs. Thus, if a state identifies an area where more stringent requirements are necessary, it should be able to act. In this way, the states also can serve as laboratories to develop better ways of ensuring satisfactory ILEC performance, without any risk that ILECs will be allowed to operate without minimum requirements. Thus, using the federal requirements as a floor, not a ceiling, is the best approach.

The federal performance standards also can play a role in Section 271 proceedings, but meeting the performance standards, in and of itself, should not be considered proof that a Bell company has met the checklist requirements. Rather, the Commission should depend on specific state determinations of compliance or noncompliance, as it has in the past. However, to the extent that a Bell company does not meet the Commission's performance standards on checklist

items, that failure should be treated as conclusive evidence that the Bell company has not complied with the checklist requirements. Otherwise, the Bell company's incentive to meet the performance requirements would be diminished significantly.

B. The Commission Should Establish Reasonable Processes for Modification of Performance Requirements in the Future.

The *Notice* seeks comment on several issues relating to future modifications to its performance requirements, including the level of authority that should be delegated to the Common Carrier Bureau and whether the performance standards should sunset at a specified time. For the reasons described below, the Commission should set its requirements to maintain flexibility to respond to trends and emerging issues and should not handcuff itself or the industry by assuming that the need for performance standards will diminish in the foreseeable future.

First, the Commission can maintain flexibility by delegating authority to the Common Carrier Bureau to modify business rules and the format of required ILEC reports. The bureau is well situated to track trends in the provision of services and functionalities to CLECs and to respond to the changes those trends represent. Giving the bureau the ability to modify business rules and report formats (as opposed to basic performance requirements) will help prevent the Commission's measurement and evaluation process from falling behind as the market changes.

Second, there should be no automatic sunset of the performance standards adopted in this proceeding. The Commission cannot predict today how long it will be before competition is fully developed and it will be necessary to maintain performance standards at least until that time. An automatic sunset, on the other hand, would mean that there would be no guarantee that ILECs would continue to meet their obligations to CLECs and CLEC customers.

III. Specific Performance Requirements

The Commission seeks comment on a variety of ILEC services and functions that could be subject to performance standards and seeks comment on how those standards could be implemented. In this section, Cox provides its responses as to services and functions that are most significant to Cox's operations. Cox does not, by these comments, mean to suggest that this is an exhaustive list, but only to highlight the most important areas in which performance standards should be adopted. Further, Cox notes these measures should apply not only to UNEs, resale, and back office and billing support, but also to interconnection trunk ordering and provisioning. In particular, without sufficient interconnection trunks a CLEC simply cannot serve its customers, even if it is a facilities-based provider. Cox has experienced repeated problems with the timely fulfillment of interconnection trunk orders. This has been exacerbated by the ILECs' frequent revisions to their trunk ordering processes, which add to the administrative burden on the CLEC. The following discussion focuses first on the measures discussed in the *Notice* and then addresses additional specific issues of concern to Cox.

A. Pre-Order Measurement

Cox agrees that ILECs should be required to measure and report whether their pre-ordering systems provide reasonable response times. Pre-order response is significant to Cox because unreasonable delays in obtaining information from ILECs make it more difficult for Cox to provide timely answers to its own customers concerning the services they wish to order.[5]

[5] *See* Exhibit 1, Declaration of Jill Nickel Butler, ¶ 4.

B. Order Status Measurements

The Commission has proposed three measures of order status timeliness: Order Notifier Timeliness, Order Completion Notifier Timeliness and Percentage of Jeopardies for Orders. Each of these measures should be included in the standards adopted in this proceeding.

Order Notifier Timeliness

Order Notifier Timeliness should be measured from the time an ILEC receives a valid order to the time the firm order commitment is transmitted to the competing carrier. This is an effective measure of the time it takes the ILEC to process the order. The Commission needs to be careful, however, in defining what constitutes a "valid order." Obviously, all orders that flow through should be considered valid, but this category also should include orders that are rejected due to ILEC processing errors. It is Cox's experience that orders often fall out or are not processed automatically because of supposed errors even though the CLEC has done nothing wrong.[6] Rather, some ILEC data entry administrators are improperly trained and, consequently, valid orders are delayed. If this issue is not addressed by the performance standards, then ILECs will have incentives to make orders fall out of processing for invalid reasons to avoid having to count them towards calculation of their performance.

Order Completion Notifier Timeliness

Order Completion Notifier Timeliness also is critical from a practical business perspective. A CLEC should begin billing its customer as soon as it turns up service. At the same time, however, the ILEC's service (and billing for such service) should be discontinued. Cox has experienced many cases in which its customers have ported their telephone numbers from the ILEC but have continued to be billed for months after service should have been

[6] *Id.*, ¶ 5.

discontinued by that ILEC.[7] In some cases, these customers have even been contacted by ILEC collection agents. This practice is confusing and aggravating for customers, and time-consuming and detrimental to Cox's ability to attract new customers. When timely notification is not received, the CLEC also must expend additional resources to police the ILEC's faulty performance. In addition, ILECs sometimes provide notification when, in fact, they have not fully completed the transition. Consequently, any measure adopted by the Commission should require ILECs to complete all aspects of the order before providing notification. In particular, a provisioning completion notice should not be issued before the ILEC unlocks E-911 records.

Percentage of Jeopardies for Orders

The measurement of Percentage of Jeopardies for Orders is an important way for the Commission to discern if the ILEC is preventing CLECs from providing timely service to their customers. As the *Notice* describes, if an ILEC provisions service to CLECs more slowly than it does to itself, this discrimination will affect CLEC success in the marketplace.[8] In addition, any measurement of parity needs to account for the time it takes the CLEC to provide service to the end user after the ILEC completes its assigned tasks.[9] Indeed, it is critical for CLECs to have notice that scheduled due dates will be missed (and why) so that they can seek to remedy the problem, either through escalating their orders in the ILEC's organization or by making alternate plans to obtain necessary facilities. Further, because jeopardy notification has been part of the

[7] *See id.*, ¶ 6. In these cases, the ILEC actually may be guilty of cramming.

[8] *Notice*, ¶ 44.

[9] The end-to-end service as it is perceived by the end user depends upon both the ILEC and the facilities-based CLEC performing complicated functions because of the nature of network interconnection, signalling, transport and billing. Many of these functions, in their detail, have not been historically performed by the ILECs and in fact are not performed by the ILEC in serving ILEC end users today. Parity in this context should mean that providing unbundled network elements and interconnection to facilities-based CLECs must be accomplished such that when a comparably efficient CLEC adds its work to that performed by the ILEC, the outcome must be equal to the outcome which would occur if the ILEC performed the counterpart work to that of the CLEC, but within the ILEC network.

ILEC ordering and provisioning process for 30 years, there is no reason to believe that providing such notifications in a timely fashion is any burden on ILECs.

C. Provisioning Measurements

Cox comments on four of the five measurements of provisioning proposed in the *Notice:* Percentage on Time Performance, Average Delay Days on Missed Installation Orders, Percentage of Missed Appointments, and Open Orders in Hold Status. As described in the *Notice,* provisioning is critical to the ability of CLECs to serve their customers.[10] If services and facilities are not provisioned to CLECs promptly and accurately, end users will perceive that CLEC service is unreliable, even when the fault lies entirely with the ILEC. For CLECs to be judged on their own actual performance, ILECs must meet their provisioning obligations.

Percentage On Time Performance

Percentage On Time Performance is the most basic provisioning measurement. It also is important because it identifies weak spots in the provisioning process. This measurement should be calculated based on the percentage of orders completed on or before the first confirmed due date or subsequent CLEC-initiated and verified change in the due date. Changes in the due date initiated by the ILEC (and particularly changes that result in delays) should be considered a miss by the ILEC in calculating this performance measure.

Average Delay Days on Missed Installation Orders

Percentage on Time Performance measures one important element of timeliness, and Average Delay Days on Missed Installation Orders measures another equally important element. Like other measures of provisioning, the average delay days measure is significant because delays in installation affect customer perceptions of CLEC performance.[11] It also is important to

[10] *Id.*, ¶46; Exhibit 1, ¶ 7.

[11] *See* Exhibit 1, ¶ 7.

measure delay days because measurements only of missed due dates give the ILECs little incentive to act once they have missed a due date.[12]

Percentage of Missed Appointments

Percentage of Missed Appointments also measures ILEC behavior that can affect customer perception of CLEC performance. This measure also provides a way to identify potential ILEC scoring errors. Missed ILEC appointments are an important factor in CLEC performance, particularly for services that require ILEC involvement, or in circumstances where the ILEC insists on being involved in the service transition. For instance, in some multi-tenant environments ILECs will not permit CLECs to handle the cutover of inside wire from the ILEC terminating equipment to the CLEC's equivalent equipment. In these cases, it is critical for the CLEC that the ILEC not miss the appointment.[13]

Measurement of Open Orders in Hold Status

Measurement of Open Orders in Hold Status also is important to determining where there are bottlenecks and weaknesses in the ILEC provisioning process. By identifying orders that have not been completed during the reporting period, this measure also puts pressure on ILECs to complete orders by a specific deadline. Again, this will reduce the incentives for ILECs to delay provisioning at any time in the process.

D. Other Performance Measurement Issues

There are some additional measurement issues that the Commission should address in this proceeding. In particular, Cox requests that the Commission adopt specific standards for

[12] If only missed due dates are measured, it makes sense for an ILEC to concentrate on meeting due dates for other orders before turning to missed orders. If, however, the number of days delayed is measured as well, ILECs retain an incentive to address delayed orders.

[13] *See id.*, ¶ 8. It is possible, if the Commission sets standards for missed appointments, that ILECs will decide to permit CLECs to undertake some functions that ILECs previously had reserved for themselves, so as to limit exposure to penalties when ILEC involvement is not actually required. Creating this sort of incentive for cooperation between ILECs and CLECs is an important benefit of adopting performance standards.

billing disputes and for provision of collocation. In these areas, Cox has found that ILEC performance failures have led to significant customer dissatisfaction and have prevented Cox from serving prospective customers.

1. Billing Matters

Since it began providing local telephone service, Cox often has had to address billing disputes related to services that its customers previously received from an ILEC. Sometimes these issues arise because the ILEC does not provide timely provisioning and billing completion notices, as discussed above. However, even with a flow-through order, Cox has found that it often takes up to three billing cycles – or sometimes more than 90 days – for ILECs to address billing disputes.[14] As a result, customers often are confused, and this confusion often is blamed on Cox, even though it is entirely an artifact of the ILEC's inability to render an accurate final bill. Even if this were not a competitive issue, it would be relevant to the Commission, however, because consumers are harmed by the ILEC's inability to resolve disputes promptly.

To address these concerns, the Commission should adopt a standard that all billing claims received by an ILEC following transfer of a customer should be acknowledged promptly and resolved within 30 calendar days of the submission of the dispute by the customer. To measure the ILEC's performance, the Commission should require reporting of both dispute acknowledgment and dispute resolution timeliness. These measures will demonstrate the ILEC's responsiveness to its former customers' inquiries and will create new incentives for ILECs to address the problems created by their inaccurate billing.

[14] *Id.*, ¶ 10.

2. Collocation Measurements

The *Notice* seeks comment on several issues related to the provisioning of collocation by ILECs, and particularly on the 90-day construction period previously adopted.[15] Collocation is essential to facilities-based CLECs because it often is the preferred method of interconnection with the ILEC in a particular region. Where collocation is the method for interconnection, facilities-based service literally cannot begin until the collocation is completed. Delays in establishing collocation thus affect both a CLEC's overall business plans and its ability to provide service to new customers at the time when service is promised.

In this context, it is apparent that the Commission should not extend the current 90-day installation interval for collocation. Because collocation serves as a threshold requirement for beginning to provide service, any delays are unacceptable. For the same reason, the Commission should enforce this deadline strictly and apply the standard to work done by both ILECs and their designated contractors.[16] In particular, ILECs should not be permitted to hide behind inadequate performance by contractors that they have chosen, as the purported reason for requiring CLECs to use those contractors is that the ILEC believes they are the only ones capable of performing the installation properly.[17] Similarly, delays attributable to the ILEC's inability to obtain work permits or other authorizations should not excuse failures to meet the deadline, because those delays result from the ILEC's actions, not the actions of the CLEC. Further, if a private easement agreement is needed from the ILEC to permit the CLEC to bring its facilities into a collocation space, that negotiation should occur concurrently with the collocation application and provisioning – not serially, as has been the case in at least one ILEC territory.

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[15] *Notice*, ¶ 13.

[16] ILECs typically insist that their designated contractors must be used to install collocation facilities.

[17] *See* Exhibit 1, ¶ 11.

Installation intervals are not the only significant metric in the collocation equation. CLECs also need to have reliable and timely information concerning when the collocation space will be turned over and the charges (both recurring and nonrecurring) that will be assessed. This information is necessary for budgeting and marketing purposes and, not incidentally, for the CLEC to determine whether collocation is a cost-effective solution in a particular location.[18] Thus, the Commission also should adopt a metric measuring the number of days for an ILEC to render an accurate cost estimate to the CLEC after the collocation application has been submitted to the ILEC.

3. Trunk Provisioning Measurements

Cox proposes three specific trunk provisioning measurements: Percentage Due Date Met, Average Delay Days on Missed Trunk Orders, and Percentage of Missed Trunk Orders. These measurements would be calculated in the same way as the analogous provisioning measures described in Section III.C above. If interconnection trunks are not provisioned to CLECs promptly and accurately and such delays result in network blockage, end users believe that CLEC service is unreliable, even when the fault lies entirely with the ILEC. For CLECs to be judged on their own actual performance, ILECs must meet their provisioning obligations.

4. Network Blockage Measurements

The rate of blockage of end-to-end interconnection trunks between the ILEC and CLEC is significant because the perception of the CLEC as a reliable local service provider is influenced by every interaction that any customer – the CLEC's, the ILEC's, or another carrier's – has with the CLEC. In the case of Cox, if a Cox customer is making a call, or an ILEC customer is calling the Cox customer, it is Cox's reputation that is under scrutiny. Thus, a

[18] *Id.*

measure of interconnection trunk blocking (from the end user to the point of interconnection), is necessary.

Trunk engineering is based on the maximum load the trunk group is expected to handle during the time the most traffic is sent over the trunk group (busy hour). The rest of the time the trunk group has unused capacity. In a sense, the trunk blockage rate is valid only at the point of maximum load. The only valid measurement is the amount of blockage that occurs during the peak hour of the peak day, and when they are daily, weekly, monthly or seasonal variations these must be considered in the determination of the peak hour - peak day.

Cox has experienced blocking problems not only on the interconnection trunks themselves, but also on trunks from other switches subtending the tandems where the interconnection occurs, all of which are in the end-to-end call path.[19] Further, all that is relevant when measuring trunk blocking is whether a standard blocking percentage is not met. A valid measure would be a determination of how many busy hours a standard blocking rate (e.g. P.01) is not met, rather than an average blocking rate.

IV. The Commission Should Adopt Reporting Requirements That Ensure Relevant Information Is Made Available on a Timely Basis.

The efficacy of the standards adopted in this proceeding is dependent on ensuring that ILECs are held to account for failures to fulfill their obligations. Enforcement is an important part of that effort, but as a practical matter enforcement will not be effective unless there is timely disclosure of relevant information concerning ILEC performance. For that reason, Cox urges the Commission to require frequent reports that cover limited geographic areas and to ensure that the reports are easily available to CLECs.

[19] *See id.*, ¶ 12.

First, reporting should occur on a monthly basis. A month is long enough to even out most spikes from unusual events, but short enough to make it difficult to conceal noncompliance or service failures. At the same time, monthly reporting will allow CLECs to highlight and seek corrections to performance failures promptly, before significant competitive harm occurs. Longer reporting intervals, such as quarterly or annually, could mean that reports would be due not only after the damage is done, but late enough so that there would be little that could be done to ameliorate the harm.

Second, reports should be made on a LATA-by-LATA basis. This is particularly important in the larger states, such as California, where there may be significant differences in performance from city to city that could be washed out in a state-wide report. For instance, if Pacific Bell has excellent performance in San Francisco, but poor performance in the San Diego area where Cox provides local exchange service, a state-wide report based on averages or percentages could show satisfactory state performance, even though CLECs in San Diego are significantly affected. LATA-by-LATA reports also are important in states like Virginia, where market characteristics differ significantly from one LATA to another. It may be relatively easy for Verizon to meet certain standards in northern Virginia because it has geared up for competition in that LATA, but it may fail to meet the same standards in the Norfolk LATA because Verizon faces less competition there.

Finally, it is important for CLECs to have access to any and all reports relevant to them upon reasonable request. Access to performance reports is particularly significant because that may be the only way for CLECs to know whether they should seek corrective action or invoke their enforcement rights. One way to ensure that CLECs have access to relevant reports is to require those reports to be made available for at least two years on the ILEC's web site so that

the reports can be downloaded for analysis and storage by the CLECs. A two year period is appropriate because it mirrors the deadline under the Communications Act for filing a formal complaint, and it is likely that performance reports will form the basis for many CLEC complaints if ILECs do not meet the Commission-mandated standards.[20]

V. The Commission Should Adopt Enforcement Measures That Create Incentives for ILECs to Comply with the Performance Requirements.

As the *Notice* recognizes, performance standards by themselves are insufficient to ensure that ILECs will provide services and functionalities in accordance with those standards.[21] The Commission must adopt specific enforcement measures that will create incentives for ILECs to comply. As described below, the Commission's enforcement measures should include forfeitures, reductions in charges for affected services and damages paid to CLECs through the formal complaint process. Whatever remedies the Commission adopts, it should take care to be sure that the costs of noncompliance are high enough to keep them from being considered just an ordinary cost of doing business.

A. Any Enforcement Regime Must Include Forfeitures for Violation of Minimum Federal Performance Standards.

The central element of a Commission enforcement regime must be forfeitures. Forfeitures are the basic tool used by the Commission to enforce the Communications Act and its rules. Further, any forfeiture guidelines adopted by the Commission can serve as building blocks for state performance standard and enforcement policies. This is especially significant if the Commission, as suggested above, permits states to adopt their own, more stringent performance standards to supplement the federal rules. Moreover, in states where performance standards have

[20] *See* 47 U.S.C. § 415.

[21] *Notice*, ¶ 4.

not been adopted, the existence of federal penalties will provide incentives for compliance even in the absence of the threat of state enforcement.

For forfeitures to be effective, they must be meaningful and must be imposed for any failure to meet the adopted performance standards, whether intentional or negligent.[22] The base forfeitures should be set as close to the statutory maximum as possible to provide adequate disincentives for poor ILEC performance. The Commission should not grant relief from forfeitures except in the most obvious circumstances, such as natural disasters. Even in such cases, the ILEC should be required to show that service to its own end user customers suffered in the same way and to the same extent as service to CLECs and other carriers. Otherwise, ILECs will have incentives to restore service to their own customers more swiftly than to CLECs and their customers, which obviously will disadvantage CLECs in the marketplace.

Third, the Commission should create internal procedures that make the imposition of forfeitures essentially routine once a report showing noncompliance has been filed by an ILEC. This is important so that the consequences of the failure to meet performance standards follow swiftly after the failure itself, again creating appropriate incentives. If there are significant delays in the imposition of forfeitures, ILECs will be less likely to recognize the consequences of their actions.

[22] The Commission is empowered to impose forfeitures for repeated or willful violations of its rules. 47 U.S.C. § 503(b)(1). To the extent that an ILEC fails to comply with a particular standard more than once over a designated period, the "repeated" standard is met. *See, e.g.*, SBC Communications, Inc., *Notice of Apparent Liability for Forfeiture*, File No. EB-01-IH-0030 (rel. Jan. 18, 2002) (forfeiture for repeated violation of condition of merger). Moreover, for a violation to be "willful," it need not be intentional. Rather, the violator merely needs to have known of the requirement, been capable of meeting it and failed to do so. *See, e.g.*, Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, *Second Report and Order and Further Notice of Proposed Rulemaking*, 14 FCC Rcd 1508, 1540-41 (1998) (forfeitures can be imposed even for "inadvertent" violations).

B. The Commission Should Adopt and Encourage Remedies that Give CLECs Relief for ILEC Performance Failures.

Imposition of forfeitures is an essential part of enforcing the Commission's performance standards. Forfeitures, however, are paid to the U.S. Treasury, and will not benefit the parties harmed by ILEC noncompliance. Consequently, the Commission should follow the lead of many state performance standard plans and provide for remedies that will benefit affected CLECs. In particular, the Commission should require refunds or other reductions in charges for affected services and should permit noncompliance with performance standards to serve as prima facie evidence of liability in any complaint proceeding concerning provision of service to CLECs by ILECs. These remedies should be considered cumulative, and a CLEC's election to invoke one of them should not preclude it from seeking another. Indeed, each remedy serves a different purpose. Forfeitures are government punishment for noncompliance with the rules; refunds or discounts reflect the difference between the value of the service requested and the value of the service provided; and damages in complaint proceedings reflect the costs imposed on the CLEC by the ILEC's failure to meet its obligations.

Refunds or reductions in charges are a logical response to ILEC failure to meet their service obligations. Such discounts are a standard element of many sophisticated telecommunications contracts, which often provide detailed service metrics and specify refunds for failures to meet those metrics. Indeed, many ILECs offer service guarantees, with specified monetary penalties, to their largest retail customers. Consequently, there is wide recognition that discounts or refunds are an appropriate tool to stimulate high quality performance. There is every reason to think that such a remedy would be entirely appropriate here.

Moreover, the Commission has the authority to order such a remedy to be applied. Under Section 202(a), charges must be just, reasonable and not unreasonably discriminatory.[23] It plainly would be just and reasonable to require charges to be reduced to reflect inadequate performance, and also would not be discriminatory. Any CLEC would be entitled to the discounts or refunds if performance was inadequate, and there would be no reason to provide discounts or refunds if performance met the Commission's standards. Such a requirement also would not unreasonably discriminate against the ILEC, for two different reasons. First, the ILEC is not providing a Title II service to itself because self-provisioned services are not telecommunications services.[24] Second, even if services provided by an ILEC to itself were cognizable under Section 202, that section permits the classification of services, and it would be entirely reasonable for the Commission to conclude that services provided to CLECs are, in this context, a separate class of service.[25]

Finally, the Commission also should permit CLECs to use an ILEC's failure to comply with performance standards as prima facie evidence of liability in any complaint proceeding concerning provision of service by an ILEC to a CLEC. The purpose of the performance standards is to establish minimum obligations of ILECs and, consequently, any failure to meet those standards must constitute evidence that an ILEC has not met its obligations under the Commission's Rules.[26] While an ILEC may be permitted to attempt to demonstrate that the

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[23] 47 U.S.C. § 202(a).

[24] A self-provisioned service cannot be a telecommunications service for two distinct reasons. First, it is not provided to the general public, but is provided only to the carrier itself. Second, it is not provided for a fee. 47 U.S.C. § 3(46).

[25] 47 U.S.C. § 202.

[26] The converse does not hold, however: An ILEC should not be able to use compliance with performance standards, especially aggregated to the LATA or state level, to show that it has not harmed a CLEC. Aggregated data is insufficient to show that the CLEC was not harmed and, in any event, compliance with performance standards may have little to do with the specific violations alleged by a CLEC.

violation of the standards did not constitute a violation of the CLEC's rights, it should bear a heavy burden to do so.

VI. Conclusion

For all these reasons, Cox Communications, Inc., respectfully requests that the Commission adopt the rules and policies described herein.

Respectfully submitted,

COX COMMUNICATIONS, INC.

By: _____
J.G. Harrington

Its Attorney

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January 22, 2001

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 22nd day of January, 2002, copies of the foregoing "Comments of Cox Communications, Inc." were served, via first-class mail, postage prepaid, on the following:

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 - 12th Street, SW, Room 8-B201
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

The Honorable Michael Copps
Commissioner
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

The Honorable Kevin J. Martin
Commissioner
Federal Communications Commission
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Janice Myles
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Qualex International, Portals II
445 12th Street, SW, CY-B402
Washington, DC 20554

Vicki Lynne Lyttle

Vicki Lynne Lyttle

EXHIBIT 1

DECLARATION OF JILL NICKEL BUTLER

The declaration of Jill Nickel Butler is provided in facsimile form. The original will be provided to the Commission under separate cover.

DECLARATION OF JILL NICKEL BUTLER

1. My name is Jill Nickel Butler. I am Vice President of Regulatory Affairs, Southeast Region, of Cox Communications, Inc. ("Cox"). I am providing this declaration in connection with Cox's comments on the *Notice of Proposed Rulemaking* (the *"Notice"*) on the development of performance measurements and standards for incumbent local exchange carriers ("ILECs").

2. My responsibilities include operational and regulatory issues affecting Cox's competitive local exchange services nationwide. For that reason, I am personally familiar with Cox's telecommunications operations and Cox's interactions with ILECs. The information provided in this declaration is based on my personal knowledge.

3. I have reviewed Cox's comments in this proceeding, and in particular have reviewed the discussion of specific performance requirements in Part III of those comments. The purpose of this declaration is to address the reasons that Cox believes these measurements are necessary.

4. *Pre-Order Measurement:* The comments explain that unreasonable delays in obtaining responses from ILECs affect Cox's relationships with its customers. This explanation is based on repeated experiences Cox has had in receiving delayed responses from ILEC pre-ordering systems.

5. *Order Notifier Timeliness:* The comments explain that this measure should be based on all valid orders, including orders that are rejected due to ILEC processing errors. As the comments describe, Cox often has discovered that its orders have fallen out of processing or otherwise been rejected due to ILEC errors. The delays caused by these ILEC errors have affected Cox's ability to provide service to its customers upon request.

6. *Order Completion Notifier Timeliness:* As described in the comments, Cox often has experienced significant delays in receiving confirmation of order completion. These delays have led to administrative expenses for Cox and customer confusion.

7. *Percentage of Jeopardies for Orders, Percentage On Time Performance and Average Delay Days on Missed Installation Orders:* Cox often has experienced missed schedules by ILECs for collocation, deployment of interconnection trunks, customer cutovers and other ILEC-provided services and functions. These delays have affected Cox's ability to obtain, serve and retain customers for local telephone service. Further, in many cases the delays have been significant, creating further harm to Cox's ability to serve its customers.

8. *Percentage of Missed Appointments:* Cox often depends on ILEC personnel to perform functions, such as cutovers in multiple tenant buildings, on specific schedules. In many instances, the ILEC personnel have missed the appointments to perform these functions, resulting in wasted time by Cox personnel, reduced customer revenues and, in some cases, lost customers.

9. *Open Orders in Hold Status:* Cox repeatedly has had orders remain in hold status for extended periods, including periods of a month or more. Such held orders reduce Cox's ability to serve its customers in a timely fashion, and often result in Cox missing installation dates for service to new customers.

10. *Billing Matters:* As described in the comments, Cox often has to address billing disputes related to services its customers previously received from an ILEC, and it can take up to three billing cycles for ILECs to address billing issues affecting former customers. Although Cox has no responsibility for these matters, Cox often is blamed for the billing disputes by its customers.

11. *Collocation:* The comments describe specific concerns Cox has concerning collocation. In Cox's experience, installation of collocation facilities often is delayed beyond the 90-day period that the Commission has established. ILECs claim that these delays are caused by their designated contractors, by permitting issues and by other factors within their control and outside Cox's control. ILECs also increase the delays in the collocation process by not providing firm dates for when collocation space will be turned over to Cox and by failing to provide accurate cost estimates. Without firm dates for the availability of collocation space, Cox cannot plan the installation of equipment and the initiation of service. Without cost estimates, Cox cannot make budgeting and marketing plans, and also cannot make an accurate determination of whether collocation is a cost-effective means of interconnection at a specific point.

12. *Trunk Blocking:* Cox often has experienced significant blocking on interconnection trunks. This blocking typically results from the ILEC's failure to provide sufficient facilities to meet industry standards for call transmission. The blocking occurs not only on final trunks, but also on intermediate trunks used to route traffic from ILEC end offices to a Cox interconnection facility at a tandem.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2002.

Jill Nickel Butler

Jill Nickel Butler
Vice President of Regulatory Affairs, Southeast Region