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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby comments on the *Notice of Proposed Rulemaking*, FCC 01-339, issued in the above-captioned proceedings on November 19, 2001. CompTel is the premier industry association representing competitive telecommunications providers and their suppliers. CompTel's members provide

local, long distance, international, Internet and enhanced services throughout the nation, and therefore CompTel has a direct interest in this proceeding.

CompTel and several member companies have worked together as part of a Joint Competitive Industry Group to develop model performance measurements and standards for the interstate Special Access services of the incumbent local exchange carriers ("ILECs").[1] CompTel strongly supports the adoption of rigorous performance measurements and standards for these services, and urges the Commission to rely upon the recommendations of the Joint Competitive Industry Group. In order to ensure that these measurements and standards achieve their objectives, the Commission should impose monthly reporting obligations on ILECs and implement an aggressive enforcement regime.

There is a compelling need for the Commission to expeditiously adopt performance measurements and standards for the ILECs' Special Access services. The ILECs control over 90% of the market for loop/transport combinations, and their market share is even higher outside the largest metropolitan areas. Numerous service providers – ranging from long distance carriers and competitive local entrants to Internet and advanced services providers – have no feasible alternatives to Special Access services for the dedicated transmission links they need to serve customers. Competitive entry has not yet established significant commercially-available wholesale alternatives, and self-provisioning is not possible due to economies of scale, cost, building access, capital scarcity, and other factors. For many years the Commission has

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[1] See Letter from the Joint Competitive Industry Group to the Honorable Michael K. Powell, CC Docket No. 01-321, filed Jan. 22, 2002, proposing performance measures, standards, and business rules for interstate special access. The Joint Competitive Industry Group is comprised of AT&T, Cable & Wireless, Choice One Communications, Focal Communications, Global Crossing, Ltd., NewSouth Communications, PaeTec Communications, Time Warner Telecommunications, WorldCom, XO Communications, ALTS, and CompTel.

regulated the ILECs as dominant carriers in the provision of Special Access services, and nothing has changed recently to undermine the ILECs' domination of the market for loop/transport combinations.

The ILECs have significant and expanding incentives to harm retail competition through the ineffective and discriminatory provisioning of Special Access services. With regard to entrants who seek to use Special Access circuits to provide retail local services, the ILECs have an incentive to degrade the quality of Special Access services in order to protect their monopoly retail local exchange revenue streams. As for providers of long distance, Internet and advanced services, the ILECs' incentive to degrade the quality of Special Access services has mirrored their accelerating entry into those market segments. Each new Section 271 approval has carried with it added incentives for the Bell Company to use its market power to hinder the competitive success of its rivals. Not surprisingly, the competitive industry has witnessed sharp declines in the quality of the ILECs' Special Access services over the past two years, leading to one formal complaint by a CompTel member company against an ILEC for sub-standard Special Access performance – Cable & Wireless USA, Inc. v. Verizon, EB-01-MD-022 – and numerous urgent requests from a wide cross-section of the industry for the immediate imposition of mandatory performance measurements and standards.

The need for new rules has increased with the FCC's decision to preclude competitive carriers from obtaining the UNE equivalent of Special Access services, known in the industry as the enhanced extended link ("EEL"). In a series of decisions culminating a few weeks ago with its decision in *Net2000 Communications, Inc. v. Verizon*, FCC 01-381, File No. EB-00-018 (rel. Jan. 9, 2002), the FCC effectively has made the EEL unavailable to competitive carriers by restricting the routing of interexchange services over EELs and through a broad prohibition

against the "co-mingling" of EEL and non-EEL traffic on shared facilities.[2] In light of the FCC's elimination of the EEL as an entry mechanism for local and long distance carriers, it is incumbent upon the Commission to take whatever steps are necessary to ensure that competitive carriers can rely upon the only alternative remaining to them – the ILECs' Special Access services – in implementing their business plans and providing services to subscribers.

As the FCC well knows, it cannot rely upon subscriber pressures to discipline the misconduct of the ILECs. Most subscribers are unable to discern whether the cause of service problems they experience is the competitive carrier or the underlying ILEC. The marked tendency is for the subscriber to blame the new carrier for any problems associated with migrating its account, regardless of whether that carrier is blameless for those problems. (Even a sophisticated customer who understands that the problem lies with the ILEC will often be reluctant to switch to a new carrier because the hassles and potential harm to its business may not be worth the lower prices and better services offered by the entrant.) The unfortunate result is that the ILECs benefit competitively when they degrade the Special Access services they provide to competitive service providers.

The need for rules mandating performance measurements and standards also is underscored by the industry's broad reliance upon Special Access services. Assuming EELs had not already been eliminated by the Commission, their availability would be limited to service providers qualifying as requesting carriers under Section 251(c). Many service providers who do not qualify as a carrier – *e.g.*, Internet or information service providers – often depend on Special Access services to provide services to customers. Even if EELs were available, these service

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[2] CompTel has appealed the FCC's EELs restrictions in *Competitive Telecommunications Association v. FCC*, No. 00-1272 (D.C. Cir.).

providers still would be at the mercy of the ILECs' Special Access services because they are not entitled to purchase unbundled network elements ("UNEs") under the statute. Hence, mandatory performance measurements and standards are necessary to ensure that service providers that are forced to rely upon Special Access services have a meaningful opportunity to compete against the ILECs.

The need for new rules adopting performance measurements and standards for Special Access services is so compelling that CompTel urges the Commission to make this proceeding a top priority. CompTel recognizes that the Commission has proposed national performance measurements and standards for UNEs in a companion proceeding (CC Docket Nos. 01-318, *et al.*), and CompTel agrees that such rules will be useful in many States. Nevertheless, should the Commission determine that it cannot devote the necessary resources to expedite both proceedings simultaneously, CompTel submits that the Special Access rulemaking should receive priority treatment. While some States have adopted meaningful performance assurance plans for UNEs, State regulators generally do not have authority to adopt performance assurance plans for interstate Special Access services. Further, service providers dependent on Special Access services are typically governed by a tariff, and hence do not have the same option as UNE purchasers seeking to negotiate provisioning assurances or remedial measures in their interconnection agreements. As a result, while CompTel supports the adoption of mandatory performance measurements and standards in both proceedings, the Special Access proceeding should be accorded top priority on the FCC's agenda.

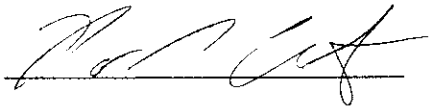
Lastly, the Commission's authority to adopt mandatory performance measurements and standards cannot reasonably be disputed. The ILECs' Special Access services are fully subject to the provisions of Sections 201 and 202 of the Communications Act, and Section 201(b)

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." 47 U.S.C. §201(b); *see also* 47 U.S.C. §154(i).

For the foregoing reasons, CompTel respectfully requests that the Commission adopt mandatory performance measurements and standards for the ILECs' Special Access services as stated herein.

Respectfully submitted,

COMPETITIVE TELECOMMUNICATIONS ASSOCIATION

By: 

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Dated: January 22, 2002

CERTIFICATE OF SERVICE

I, Theresa A. Baum, hereby certify that on this 22nd day of January, 2002, copies of the Comments Of The Competitive Telecommunications Association in the above-captioned proceedings were served by hand on the following:

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