

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

The National Association of Regulatory Utility Commissioners (“NARUC”) respectfully submits these comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) November 19, 2001 *Notice of Proposed Rulemaking* in the above-captioned proceeding.^{1/} The *Notice* seeks to ascertain whether a regime of performance measures, performance standards, reporting requirements, and related enforcement mechanisms can ensure that incumbent local exchange carriers (“ILECs”) comply with their statutory obligations to provide competitive local exchange carriers (“CLECs”) with nondiscriminatory access to unbundled network elements and interconnection.

^{1/} *Notice of Proposed Rulemaking*, CC Docket Nos. 01-318, 98-56, 98-147, 98-96, 98-141 (FCC 01-331) (rel. Nov. 19, 2001) (“*NPRM*”).

Significantly, the FCC also seeks information in this proceeding on both (1) the source of its authority to promulgate national standards (*NPRM* at ¶ 14) and (2) how to harmonize its proposals with the existing State standards (*Id.* at ¶¶ 15-20). On November 14, 2001, in response to the *NPRM*, NARUC passed a resolution recognizing “. . . the FCC for its continued focus on enforcement and enforcement related issues,” and suggesting the following:

- *Because the authority and the knowledge to design and implement performance measurements and standards has traditionally rested with the individual State regulatory authorities, the FCC should assure States are able to continue to develop and oversee their State specific plans; and*
- *The FCC should create a mechanism, which allows the FCC and State regulatory authorities to work together to develop minimum base guidelines that will provide the minimum information needed for effective FCC and State enforcement efforts.*

DISCUSSION

Any FCC Action Should Not Undermine Existing State Commission Efforts To Implement and Oversee State Specific Plans To Assure ILEC-To-CLEC (Or Carrier-To-Carrier) Quality Of Service Performance.

This is not the first time the FCC has sought information on both the source of its authority to promulgate national standards applicable to local service arrangements and how to harmonize any such proposals with the existing State standards. The last related proposed rulemaking, from 1998, was initiated, at least partially, at the request of NARUC. See, “Notice of Proposed Rulemaking” *In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance*, CC Docket No. 98-56; RM-9101, 13 FCC Rcd 12817 (Rel. April 17, 1998 Ad. April 16, 1998)^{2/}

^{2/} This earlier notice is available online at the FCC’s website at the following URL: http://gullfoss2.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=2060360001.

Even back then, the FCC recognized the most efficient approach would be to adopt model performance measures and reporting requirements that are not “legally binding” on the States. *Id.* at ¶ 4.^{3/} Ultimately, the FCC took no action on the guidelines proposed in that 1998 proceeding effectively leaving implementation to the States – an approach strongly supported by several of the large ILECs.^{4/}

As the FCC recognizes, in the three and one half years since the FCC deferred action on ILEC performance measures, “. . . many State commissions have already adopted an extensive set of performance measurements, standards, and penalty plans to capture incumbent LECs' performance in provisioning UNEs, interconnection trunks and collocation.” Indeed, “. . . the bulk of the performance requirements [] propose[d in this rulemaking] have their origins in whole or in part in State proceedings.” *NPRM* at ¶ 19.

^{3/} Several ILECs strenuously rejected the notion of national standards in favor of a State-by-State approach. *See, e.g., Comments of BellSouth Corp.*, RM-9101, at 14-19 (July 10, 1997) (federal performance standards for UNEs are unnecessary, inappropriate, and superfluous); *Comments of the Bell Atlantic Telephone Cos.*, CC Docket No. 98-56 at 3 (June 1, 1998) (“[A] single national set of performance measurements would not take into account the differences in systems and would produce meaningless results”); *Comments of SBC Communications Inc.*, CC Docket No. 98-56 at 2 (June 1, 1998) (asking the FCC to respect State level agreements and not impose undue burdens by “re-creat[ing] the wheel.” Leaving aside the question of whether the FCC has the jurisdiction to promulgate such standards, NARUC’s first response was to advocate, based on a November 11, 1997 resolution, that States should retain the “ability to establish the actual performance benchmarks, or the minimum performance requirements, based upon the applicable ILEC’s own performance data.” *See Reply Comments of the National Association Regulatory Utility Commissioners*, CC Docket No. 98-56 at 8 (July 6, 1998).

^{4/} *See* note 4. Indeed, just last October, some ILECs acknowledged the value of State performance plans and suggested any federal plan not supplant State plans, but rather build on them. *See Letter from Robert T. Blau, BellSouth to Dorothy Attwood, Chief, Common Carrier Bureau*, FCC, CC Docket No. 96-98, at 1 (Oct. 18, 2001) (requesting that State performance measures continue to apply); *Letter from Caryn Moir, SBC Communications, Inc. to Magalie Roman Salas, Secretary*, FCC, CC Docket No. 96-98, at 1 (Oct. 16, 2001) (contending a national model “must use existing state standards as models where possible, allowing SBC to use previous investment in reporting systems and processes where reasonable”).

The FCC's original decision to effectively defer to the States is also consistent with the text of the 1996 legislation.⁵¹ The 1996 Act reinforces the continuing right and concomitant duty of State commissions to take action to address local conditions, issues, and concerns as the local telecommunications service market is opened and matures. For example, 47 U.S.C. § 253(b) explicitly preserves State authority to "ensure the continued quality of telecommunications services" within the State. Section 252(e)(3), 47 U.S.C. § 252(e)(3), authorizes a State commission, in its review of an interconnection agreement, to establish and to enforce "other requirements of State law[,] including compliance with intrastate telecommunications service quality standards or requirements." Section 251(d)(3), 47 U.S.C. § 251(d)(3), states that the FCC shall not preclude the enforcement of any regulation, order, or policy of a State commission that -- establishes access and interconnection obligations of local exchange carriers; (B) is consistent with the requirements of [§ 251]; and (C) does not substantially prevent implementation of the requirements of [§ 251] and the purposes of [the Act]. From these legislative mandates, it is clear that Congress recognized, and made provision for, the States' valuable and continuing role in the development of standards and measurements used to determine an ILEC's compliance with State and Federally imposed requirements to interconnect and to provide access to unbundled network elements.

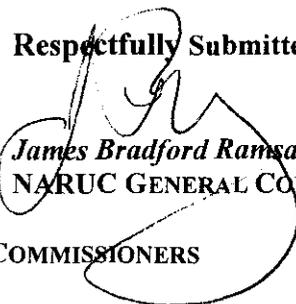
It should come as no surprise that the States assumed the responsibility left to them by Congress (and the FCC) and invested significant resources to implement decisions on performance issues. Almost every major State has implemented, or is in the process of implementing, a reasonable version of the core measurements outlined in the NPRM.

⁵¹ *The Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996). ("Act")

Significantly, those who have acted have also gone beyond the core measures to address concerns specific to their markets. The States are present in, and familiar with, each market, as well as the broader State regulatory paradigm under which these ILECs are operating. Given their proximity, familiarity with the issues, the role assigned State commissions under both federal and State enactments, it would be inefficient and wasteful for any FCC action to limit States flexibility or undermine ongoing State programs.

The FCC should create a mechanism, which allows the FCC and State regulatory authorities to work together to develop minimum base guidelines that will provide the minimum information needed for effective FCC and State enforcement efforts.

In ¶ 21 of the NPRM, the FCC solicits comment on whether it should establish a joint Federal-State task force that could, among other things, develop and implement directives that may result from this proceeding. NARUC agrees the FCC should create some mechanism to allow the FCC and States to work together to develop minimum base guidelines. Creation of such a mechanism will promote the public interest. The FCC's initiative will depend critically upon comprehensive empirical information about, and the industry's experience with, existing State performance programs, both of which will vary, sometimes significantly, from State to State and region to region. As a result, the hands-on participation by State regulators with the FCC in this process is both appropriate and necessary.

Respectfully Submitted,

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Appendix - Resolution on National Performance Standards

WHEREAS, On November 8, 2001, the FCC initiated a rulemaking to establish a core set of national key performance measurements for evaluating an incumbent LEC's performance in provisioning wholesale facilities and services to competitors; *and*

WHEREAS, The NPRM offers for comment a set of 12 specific performance measurements and seeks comment on related issues of implementation, reporting requirements, and enforcement mechanisms; *and*

WHEREAS, Many States have already established performance metrics and penalties specific to the unique characteristics of the networks and markets served by the telecommunications carriers in those States; *and*

WHEREAS, While numerous States have adopted standards for network elements and interconnection in the context of interconnection agreements; *and*

WHEREAS, NARUC agrees regulators must be concerned about carrier-to-carrier interactions and that without sure and adequate standards and accompanying sanctions, competition cannot develop; *and*

WHEREAS, The NPRM and public statements suggest the FCC understands the desirability of coordinating enforcement and enforcement efforts closely with State regulators; *now therefore be it*

RESOLVED, That the National Association of Regulatory Utility Commissioners, convened in its November 2001 113th Annual Convention in Philadelphia, Pennsylvania, recognizes the FCC for its continued focus on enforcement and enforcement related issues; *and be it further*

RESOLVED, That the authority and the knowledge to design and implement performance measurements and standards has traditionally rested with the individual State regulatory authorities and that States should continue to be able to develop and oversee their State specific plans; *and be it further*

RESOLVED, That NARUC encourages the FCC to create a mechanism, which allows the FCC and State regulatory authorities to work together to develop minimum base guidelines that will provide the minimum information needed for effective FCC and State enforcement efforts; *and be it further*

RESOLVED, That NARUC encourages each of its members to file comments outline both their enforcement experiences and concerns.

Sponsored by the Committee on Telecommunications. Recommended by the NARUC Board of Directors November 13, 2001. Adopted in Convention November 14, 2001.