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

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 Offerings 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**

REPLY COMMENTS OF
THE ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises ("ASCENT"),[1] through undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R.§ 1.415, hereby responds to the comments of BellSouth Corporation ("BellSouth"), SBC Communications Inc. ("SBC"), and the Verizon Telephone Companies ("Verizon") (collectively, the "Large Incumbent LECs") submitted in response to the *Notice of Proposed Rulemaking*, FCC 01-331, released November 19, 2001, in the captioned proceedings ("*NPRM*"). In the *NPRM*, the Commission sought

[1] ASCENT is a national trade association representing smaller providers of competitive telecommunications and information services. The largest association of competitive carriers in the United States, ASCENT was created, and carries a continuing mandate, to foster and promote the competitive provision of telecommunications and information services, to support the competitive communications industry, and to protect and further the interests of entities engaged in the competitive provision of telecommunications and information services.

comment on whether it "should adopt a select group of measurements and standards for evaluating incumbent local exchange carrier ("incumbent LEC") performance in the provisioning of facilities that are used by their carrier-customers to compete for end-user customers."[2] The Large Incumbent LECs generally do not oppose adoption by the Commission of "a limited set of performance measurements," but urge that any such measurements and standards be made "mandatory," supplanting all existing State performance requirements.[3] While ASCENT concurs with the many parties that have shown in their comments that national performance measurements and standards for incumbent LEC provisioning of unbundled network elements ("UNEs"), as well as interconnection and collocation, could facilitate realization of the Congressional vision of a robustly competitive local exchange/exchange access market, this end will only be achieved if such national performance measurements and standards serve as threshold requirements to be amplified by current and future State performance plans.

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[2] NPRM at ¶ 1.

[3] BellSouth Comments at 10 - 18; SBC Comments at 4 - 11;Verizon Comments at 32 - 36.

As the Commission is aware, in the four years following release by the Commission of the *Notice of Proposed Rulemaking* proposing "the adoption of model performance measurements and reporting requirements to serve as guidelines for state commissions,"[4] a large number of State Commissions have developed comprehensive performance measurements and standards, as well as associated reporting requirements and penalty provisions. These performance plans represent an enormous investment of time and resources not only by the State Commissions, but by incumbents and competitors alike. Because such performance plans are often the product of multi-state collaborative initiatives or are modeled on existing plans, they tend to be fairly uniform within any given incumbent LEC's multi-state service areas with respect to definitions, core measurements, and standards, as well as related business rules. Nonetheless, individual State performance plans also incorporate State-specific concerns, often reflecting specific performance problems experienced by competitors in the State. Moreover, performance plans tend to be tailored within a given incumbent LEC's service area to the operations and systems of the incumbent, creating region-to-region differences. And individual State performance plans continue to evolve to address new competitive concerns and problems.

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[4] Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance (Notice of Proposed Rulemaking), 13 FCC Rcd. 12817, ¶ 4 (1998).

The performance plans adopted by, or under consideration in, the most populous, as well as the large majority of other, states[5] tend to be far more extensive and detailed than the "select group of measurements and standards" proposed in the *NPRM*. The Commission has consistently lauded not only the comprehensiveness of State performance plans, but their ongoing growth and development, repeatedly relying upon such plans, both as instituted and evolving, to satisfy the statutory public interest standard for grant of in-region, interLATA authority to Bell Operating Companies ("BOCs"). Thus, for example, in authorizing SBC to originate interLATA traffic in Texas, the Commission stressed that "[t]hrough a collaborative process SWBT has increased the number of performance measurements from 66 at the time of its initial filing before the Texas Commission to the 131 measurements in place at the time of filing . . . [its] section 271 application,"emphasizing that "the plan is not static" and that "the Texas Commission . . . [was] considering modifying existing measurements, and adding new measurements based on input from both SWBT and competitive LECs."[6] Indeed, the Commission identified the "continuing ability of the measurements to evolve as an important feature because it allows the Plan to reflect changes in the telecommunications industry and in the Texas market."[7]

In awarding Verizon in-region, interLATA authority in New York, the Commission

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[5] BellSouth Comments at 8 -9 (Florida, Georgia, Kentucky, Louisiana, Mississippi); SBC Comments at 5 - 7 (Arkansas, California, Illinois, Indiana. Kansas, Michigan, Missouri, Nevada, Ohio, Oklahoma, Texas, Wisconsin); Qwest Communications International, Inc. Comments at 5 -6 (entire 14-State region); Verizon Comments at 33 - 35 (District of Columbia, Massachusetts, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia).

[6] Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Service in Texas (Memorandum Opinion and Order), 15 FCC Rcd 18354, ¶ 425 (2000) (*subsequent history omitted*).

[7] Id.

characterized as "sufficiently comprehensive" the "series of 152 measurements or metrics [and associated standards]. . . developed through the 'Carrier-to-Carrier Service Quality' proceeding before the New York Commission," remarking that they "cover[ed] Bell Atlantic's performance on key functions essential to an open, competitive local exchange market."[8] And the Commission "applaud[ed] the role played by the New York Commission in providing a forum for ongoing modification and improvement of the performance metrics," emphasizing that importance of plan evolution in addressing the changing telecommunications market in general and the New York market in particular.[9]

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[8] Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (Memorandum Opinion and Order), 15 FCC Rcd. 3953, ¶¶ 431, 439 (1999) (*subsequent history omitted*).

[9] Id. at ¶ 438.

In authorizing SBC to originate interLATA traffic in Kansas and Oklahoma, the Commission stressed that the applicable performance plans were "not static" and noted with approval that "the Kansas and Oklahoma Commissions . . . [were] committed to periodic review and modification of the plans based on input from both SWBT and competitive LECs," thereby reflecting changes in "the Kansas and Oklahoma markets."[10] In its decision granting Verizon in-region, interLATA authority in Pennsylvania, the Commission commented on the differences between the Pennsylvania and New York plans, noting that plans individually developed by different states "vary in their strengths and weaknesses," and stressing that "the development of performance measures and appropriate remedies is an evolutionary process that requires changes to both measures and remedies over time."[11] Moreover, the Commission advised that it "anticipate[d] that state commissions will continue to build on their own work and the work of other states in order for such measures and remedies to most accurately reflect actual commercial performance in the local marketplace."[12]

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[10] Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Service in Kansas and Oklahoma (Memorandum Opinion and Order), 16 FCC Rcd 6237, ¶ 82 - 86 (2001) (*subsequent history omitted*).

[11] Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region, InterLATA Service in Pennsylvania (Memorandum Opinion and Order), 16 FCC Rcd. 17419, ¶ 127 - 32 (2001) (*subsequent history omitted*).

[12] Id. at ¶ 128.

The various State performance plans which the Commission has "strongly encouraged" and found to be "within a zone of reasonableness," generally address such key incumbent functions as "pre-ordering, ordering, provisioning, maintenance and repair, network performance (interconnection trucks), collocation, [and] billing and operator services."[13] They identify a myriad of performance metrics, associated business rules and performance standards.[14] They provide for regular reporting, data validation and auditing, as well as periodic plan reviews.[15] And they incorporate mechanisms for the assessment of penalties and provide for incumbent liability for damages inflicted on competitors.[16]

The Large Incumbent LECs would have the Commission discard the State performance plans the Commission recognized as critical tools in ensuring that markets deemed open to competition will remain open to competition. They would have the Commission negate the herculean efforts of State Commissions heretofore applauded and encouraged by the Commission. They would have the Commission gloss over the state-to-state, region-to-region differences that the Commission noted were essential elements of an effective performance plan. And they would have the Commission abandon the ongoing evolution of performance metrics and standards the Commission found essential to address changes in telecommunications and local market conditions. These things, the Commission should not, and cannot, do consistent with Congressional mandates.

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[13] Application of Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York (Memorandum Opinion and Order), 15 FCC Rcd. 3953 at ¶¶ 429 - 33.

[14] Id. at ¶ 438.

[15] Id. at ¶ 440 - 42.

[16] Id. at ¶¶ 435 - 37.

The Large Incumbent LECs are not hesitant in declaring their motivation; they want out from under the scrutiny inherent in detailed and comprehensive performance plans. As described by Verizon, "the Commission's limited set of twelve proposed measurements stands in stark contrast to the thousands of measurements that state commissions have adopted."[17] Verizon admits that no State Commission has "yet proposed to reduce its total number of measurements to one hundred, let alone to one dozen critical measurements," although it shamelessly attributes this reluctance not to a desire to facilitate a competitive marketplace, but to the State Commissions' "insisten[ce] on protecting their regulatory prerogatives.[18] SBC, in an assessment echoed by BellSouth, opines that "[v]ery few of the myriad performance and reporting requirements currently in place are critical 'to competition and [the Commission's] enforcement efforts'," declaring them to be "often duplicative and gaug[ing] functions that have little bearing on the ability of CLECs to compete effectively," and complaining as to the costs of tracking and reporting data.[19]

ASCENT submits that the Large Incumbent LECs should not be heard to complain of the burden associated with compiling and reporting the data necessary to comply with individual State performance plans when they continue to pay substantial fines and damages for failing to meet performance metrics associated with key functions the Commission has recognized are "essential to an open, competitive local market."[20] It would indeed be counter intuitive to abandon performance metrics and standards as burdensome when they continue to expose noncompliance by incumbent LECs with statutory and regulatory mandates.

Individual State Commission – many after years of analysis -- have determined that

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17 Verizon Comments at 33.

18 Id.

19 SBC Comments at 8; BellSouth Comments at 10 - 15.

20 Id. at ¶ 431.

the Performance Plans they have adopted are necessary to achieve a competitive local exchange/exchange access market in their respective States. The Commission has endorsed and relied upon these findings, and Verizon and SBC have directly benefitted from them in securing in-region, interLATA authority. While the Commission can, and should, develop baseline performance measurements and standards, it must not interfere with the laudable efforts of the State Commissions to ensure that incumbent LECs irreversibly open their local markets to competition.

By reason of the foregoing, the Association of Communications Enterprises urges the Commission to designate the national performance measurements and standards for incumbent LEC provisioning of unbundled network elements ("UNEs"), as well as interconnection and collocation, adopted in this proceeding as threshold requirements to be amplified by current and future State performance plans.

Respectfully submitted,

ASSOCIATION OF COMMUNICATIONS ENTERPRISES

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