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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
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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 Service Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Petition of Association for Local Telecommunications Services for Declaratory Ruling	)	CC Docket No. 98-147, 96-98, 98-141

REPLY COMMENTS OF
THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

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SUMMARY

The majority of Rural Independent Competitive Alliance ("RICA") members provide competitive local exchange service solely through their own facilities. For those RICA members that have found it necessary to utilize unbundled network elements ("UNEs"), their experience has been one of delay and frustration in obtaining UNEs and other facilities of the large ILECs. To address these anti-competitive tactics of the large ILECs and to assist in enforcing Commission Rules, RICA joins with other CLEC commenters in this proceeding in urging the Commission to adopt specific performance measurements and standards for large ILECs. In adopting such standards, the Commission must reject a "one size fits all" approach and instead impose performance standards and measurements only on large ILECs. To impose performance standards and measurements on small and rural ILECs and CLECs with no evidence of discriminatory behavior would unjustly place unnecessary burdens and costs on these carriers.

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REPLY COMMENTS OF
THE RURAL INDEPENDENT COMPETITIVE ALLIANCE

The Rural Independent Competitive Alliance ("RICA") hereby submits these reply comments in response to the Commission's request for comment regarding whether the Commission should adopt certain measurements and standards for evaluating incumbent local exchange carrier ("ILEC") performance in the provisioning of facilities that are used by competing carriers to provide local services.[1]

The majority of RICA members provide competitive local exchange service solely through their own facilities. For those RICA members that have found it necessary to utilize unbundled network elements ("UNEs"), their experience has been one of delay and frustration in obtaining UNEs and other facilities of the large ILECs. To address these anti-competitive tactics

[1] Notice of Proposed Rulemaking, CC Docket No. 01-318, CC Docket Nos. 98-147, 96-98, 98-141, FCC 01-331 (rel. Nov. 19, 2001) ("Notice").

of the large ILECs and to assist in enforcing Commission Rules, RICA joins with other CLEC commenters in this proceeding in urging the Commission to adopt specific performance measurements and standards for large ILECs. In adopting such standards, the Commission must reject a "one size fits all" approach and instead impose performance standards and measurements only on large ILECs. To impose performance standards and measurements on small and rural ILECs and CLECs with no evidence of discriminatory behavior would unjustly place unnecessary burdens and costs on these carriers.

I. RICA Members that Utilize UNEs Support Use of Performance Standards

Following adoption of the Telecommunications Act of 1996, many small ILECs established competitive local exchange carrier ("CLEC") operations, such as RICA members, to extend their reliable, efficient and modern telecommunications services to neighboring small towns and rural communities. Generally, these neighboring areas are served by large ILECs that utilize technologically obsolete plant and switching facilities. Thus, resale or use of UNEs has not been an option for many rural CLECs that seek to provide the improved grades and quality of service demanded by these neighboring communities.

However, in certain circumstances, RICA members have found resale or the use of UNEs essential to providing service to rural subscribers. For example, UNEs have enabled some RICA members to initiate service to a community during the process of overbuilding. Other RICA members have found use of UNEs essential to providing service to remote locations outside of a community where construction of facilities would be cost prohibitive. Yet, these rural CLECs, like other commenters that provide competitive services, have experienced delay and frustration with the ability of large ILECs to provide pre-ordering, ordering, provisioning, repair and maintenance functions that the rural CLECs use to interconnect, collocate or obtain access to

UNEs.[2]

In a recent survey taken of RICA members, respondents cited the following as examples of tactics used by the large ILECs to unreasonably delay the provisioning of UNEs as well as other anti-competitive behaviors:

- When placing orders, the ILEC's responses often contain incorrect facility data regarding the UNE in question;
- ILECs delay orders for UNEs on the basis that the information provided is incorrect or incomplete; however, upon further investigation and discussions with the ILEC, the ILEC acknowledges that the order is correct as written and then, after considerable delay, processes the order;
- Large ILECs implement processes that require a pre-order to precede each firm order to pre-qualify the local loop;
- Large ILECs exercise unnecessary delays when attempting to resolve order issues

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[2] *See e.g.,* Joint Comments of TDS Metrocom, USLINK and Madison River (the "3CLECs") at 3 ("many ILECs have performed in ways which make the provision of UNEs to CLECs basically a meaningless act"); Comments of ALTS at 6 ("[b]ecause of the lack of specific, enforceable rules requiring ILECs to provision functioning loops to requesting carriers in a timely and reliable manner, incumbents have been given a five-year free pass to deny, delay, and degrade the loops they provide to CLECs. *See also* RICA's Reply Comments filed July 10, 2000 in response to the Commission's request for comment regarding ALTS' Petition for Declaratory Ruling on Loop Provisioning (CC Docket Nos. 98-147, 96-98, 98-141 and NSD-L-00-48) (referencing statements of several CLECs that large ILECs are not providing loops in the same period of time that the ILECs deploy the same loops for themselves); RICA's Comments filed on October 12, 2000 in response to the Commission's request for comment on a number of collocation-related issues (CC Docket Nos. 98-147 and 96-98) (citing specific examples of ways that large ILECs have impeded competition through delays in responding to collocation requests and urging the Commission to institute a comprehensive inquiry into methodologies of the large ILECs); Ex Parte letter filed by ALTS on December 22, 2000 (providing specific examples of problems experienced by CLECs in attempting to convert special access circuits to EELs).

and in solving trouble reports;[3]

- The large ILEC fails to contact the CLEC when reported troubles are cleared in the ILEC's network, thereby delaying the CLEC's ability to notify the customer of the repair;
- Customer service is often disconnected by the large ILEC prior to the customer cut-over date leaving the customer without telephone service;
- Large ILECs exercise unnecessary delays in informing the CLEC regarding jeopardy orders;
- Large ILECs refuse to allow the CLECs to collocate in remote facilities;
- Large ILEC exercise unnecessary delays in updating their records to recognize new E911 addressing, thus causing orders to be rejected when addresses do not match;
- Large ILECs fail to turn up service or maintain or repair facilities on a timely basis which causes numerous quality of service issues thereby significantly hindering competition;
- Large ILECs establish prices for UNEs and collocation that make their use unprofitable for competitors. One RICA member reports that the over $24.00 per loop cost in rural South Dakota makes use of UNEs uneconomical and another reports that an unbundled two wire loop costs $54.25 per month in rural Missouri, making use of UNEs cost prohibitive. A third RICA member cites a minimum

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[3] One RICA member reports being billed for maintenance time to correct a problem that was created when the ILEC connected the loop to the CLEC's wrong pair. The same member also reports that the ILEC refused to compensate the CLEC when the CLEC had to resolve a problem caused by the ILEC failing to remove all bridge taps for the DSL line even after the CLEC had questioned the ILEC regarding whether it had removed the taps as requested.

non-recurring cost of $26,628.00 for cageless collocation for one bay as being cost prohibitive.

To address these anti-competitive tactics and to assist in enforcing Commission Rules, RICA joins with other CLEC commenters in this proceeding in urging the Commission to adopt specific performance measurements and standards for large ILECs. According to ALTS, "[p]roperly 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.[4] The large ILECs' contention that current state measurements and standards are adequate cannot be substantiated given the plethora of continued anti-competitive behavior that exists in the record.[5] Accordingly, national performance measurements and standards must be adopted that, at a minimum, address the unnecessary delays and anti-competitive actions of the large ILECs as referenced above and provide for "meaningful penalties."[6]

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[4] *See, e.g,* Comments ALTS at 5; Comments of Mpower Communications at 5 -6 (a clear set of performance standards could provide ILECs and CLECs with greater inter-carrier and inter-state comparability regarding ILEC performance while at the same time gradually reducing the reporting burden on ILECs).

[5] According to Qwest, the FCC does not have to adopt performance standards to govern its behavior since over the past two years, it has "negotiated" performance standards to measure UNE performance in the states where it provides service which call for "voluntary adopted monetary payments" if the standards are not achieved. Comments of Qwest at 2. However, RICA members cite Qwest as one of the main violators of the Commission's Rules regarding UNEs and collocation.

[6] *See* Comments of the 3CLECs at 9-10 ("[r]emedies must be designed to change the present economic incentives that ILECs have to inhibit competition in order to protect their market stronghold").

II. Performance Standards Should Only Apply to Large ILECs

In its Notice, the Commission seeks comment as to whether national performance standards and measurements should apply to all ILECs, including small and rural ILECs, or to CLECs and if so, how the measurements could be tailored to account for the unique characteristics of the areas in which small, rural or midsized LECs are located.[7] Commenters demonstrated that no reporting requirements should be imposed on small and rural ILECs since with but a few exceptions, Rural Telephone Companies are not required to provide UNEs.[8] Rural Telephone Companies are only required to provide UNEs where provision can be accomplished in a manner that does not result in an economic burden on a Rural Telephone Company.[9] If small and rural ILECs were required to provide measurement data in these few cases, the data would not be sufficient to provide meaningful statistics.[10]

Further, Rural Telephone Companies do not have hardware and software systems comparable to the large ILECs. Moreover, there is no requirement for small ILECs to adopt OSS systems that the large ILECs deploy even if Section 251(c) requirements apply. Accordingly, even if Section 251 (c) requirements were applied, they would not apply in the same manner to a Rural Telephone Company as they apply to a large ILEC.

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[7] *See* Notice at paras. 23-24.

[8] *See, e.g.*, Comments of NECA at 2; Comments of NTCA at 3; Comments of the Small Independent Telephone Companies at 1-2.

[9] *See* 47 U.S.C. § 251(f)(1)(A).

[10] *See* Joint Comments of Dynegy Global Communications, Inc., e.spire Communications, Inc., ITC Deltacom, Inc, KMC Telecom, Inc., Metromedia Fiber Network Services, Inc., Nuvox, Inc., Talk America, Inc., and Z-Tel Communications, Inc. ("Joint Commenters") at 18-19.

Not only do Section 251 (c) requirements not apply to most small and rural ILECs, but because the requirements are designed for ILECs, they most certainly do not apply to CLECs. Accordingly, Verizon's argument that CLECs should be subject to the reporting requirements is utterly absurd.[11] Further, as demonstrated by CLEC commenters, the application of performance standards and measurements are being proposed by the Commission to address anti-competitive behavior of the large ILECs, not to impose greater burdens on CLECs.[12] As noted by one commenter, "CLECs simply lack the incentive or opportunity to discriminate in the provision of facilities."[13] To impose performance standards and measurements on small and rural ILECs and CLECs without strong evidence in the record of discriminatory behavior would unjustly place unnecessary burdens and costs on these carriers. Accordingly, the Commission must reject a "one size fits all" approach and instead impose performance standards and measurements only on large ILECs.[14]

III. Conclusion

In deciding whether to adopt certain measurements and standards for evaluating ILEC performance in the provisioning of facilities that are used by competing carriers to provide local services, the Commission must keep in mind that its existing rules are based upon the Congressional mandate that ILECs provide facilities to competing entities in a timely and efficient manner. As demonstrated herein, several large ILECs have ignored both the letter and intent of these statutory-based regulations and are continuing to use delay and other anti-

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11 *See* Comments of Verizon at 17-18.

12 *See, e.g.,* Comments of Cincinnati Bell Telephone Company at 2.

13 Comments of XO Communications at 26.

14 *See* Comments of Cincinnati Bell at 7-8; Comments of Joint Commenters at 18-19.

competitive tactics to inhibit competition. Accordingly, RICA urges the Commission to adopt national performance measurements and standards that, at a minimum, address the unnecessary delays and anti-competitive actions of the large ILECs as referenced herein and provide for meaningful penalties. Such standards and measurements must not be imposed on small and rural ILECs and CLECs. To impose such requirements upon these carriers without strong evidence in the record of discriminatory behavior would unjustly place unnecessary burdens and costs on these carriers.

Respectfully submitted

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CERTIFICATE OF SERVICE

I, Naomi Adams, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, do hereby certify that a copy of the foregoing "Reply Comments of the Rural Cellular Association" was served on this 12th day of February 2001, via hand delivery to the following parties:

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