LAWLER, METZGER & MILKMAN, LLC

1909 K STREET, NW
SUITE 820
WASHINGTON, D.C. 20006

GIL M. STROBEL
PHONE (202) 777-7728

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

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February 12, 2002

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

William F. Caton, Acting Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 01-321

Dear Mr. Caton:

Enclosed find an original and fifteen (15) copies of the Reply Comments of WorldCom, Inc. for filing in the above-referenced proceeding.

Please date-stamp the extra copy and return it to me.

Thank You,

Gil M. Strobel

Enclosures

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

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FEB 12 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matters 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 for Federally Tarriffed 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

REPLY COMMENTS OF WORLDCOM, INC.

Lisa B. Smith
Lisa R. Youngers
WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036
(202) 887-2992

Ruth Milkman
Gil M. Strobel
Lawler, Metzger & Milkman
1909 K Street, NW
Suite 820
Washington, DC 20006
(202) 777-7700
gstrobel@lmm-law.com

Dated: February 12, 2002

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REPLY COMMENTS OF WORLDCOM, INC.

WorldCom, Inc. (WorldCom) submits these reply comments in response to the Notice of Proposed Rulemaking released on November 19, 2001 in the above-captioned proceeding.[1]

[1] *In the Matter of Performance Measurements and Standards for Interstate Special Access Services,* CC Docket No. 01-321, 2001 FCC Rcd 6243 (2001) (*NPRM*).

I. INTRODUCTION

The record in this proceeding clearly demonstrates that the market for interstate special access services is not competitive. Competitive carriers and end users detailed the lack of alternatives to incumbent local exchange carrier-provided special access services, including obstacles to competitive carriers' ability to self-provision such services.[2] In addition, the comments in this proceeding demonstrate that the incumbent local exchange carriers' (LECs') widespread special access performance problems are undermining the ability of competitive carriers to serve their end-user customers. The clear consensus among commenters (with the exception of the incumbent LECs) is that the best solution to these mounting problems would be for the FCC to adopt performance metrics and standards for Tier 1/Class A incumbent LECs as expeditiously as possible.

WorldCom therefore urges the Commission to adopt the Joint Competitive Industry Group's proposed measurements, standards and monthly reporting requirements, as well as an effective enforcement mechanism based on the principles outlined in WorldCom's initial comments and the remedy plan proposed by the Joint Competitive Industry Group.[3] Any performance plan adopted by the Commission must address both unreasonably poor and unreasonably discriminatory performance by incumbent LECs in the provisioning and maintenance of interstate special access services.

In the discussion below, WorldCom refutes some of the more egregious misstatements and mischaracterizations contained in the Bell Operating Companies'

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[2] *See, e.g.*, Time Warner/XO Comments at 4-5.

[3] *See* letter from Joint Competitive Industry Group to Michael Powell, Chairman, FCC (Feb. 12, 2002).

(BOCs') comments. WorldCom also addresses issues raised by some of the other commenters in this proceeding.

II. DISCUSSION

A. Proxy Schedule for Damages

In its initial comments, WorldCom explained that the Commission should develop a streamlined complaint process for special access provisioning.[4] Under WorldCom's proposal, once the Commission establishes that an incumbent LEC is liable for a violation of a benchmark standard or parity standard,[5] the complaining carrier could seek damages based either on its own calculations or as defined by a proxy schedule adopted by the Commission. In an effort to assist the Commission with this process, WorldCom submits the attached proxy schedule for consideration.[6] As WorldCom explained in its comments, these damages would be in addition to any FCC-imposed forfeiture amounts.[7]

B. Competition in the Market for Interstate Special Access Services

As WorldCom and other parties have documented, the market for interstate special access services is not competitive.[8] The BOCs attempt to overcome this reality by relying on two fundamentally flawed reports to support their contention that the market is competitive. As explained below, however, the Eastern Management Group

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[4] WorldCom Comments at 50-51.

[5] In its initial comments WorldCom used the term "standard" to refer to a level of performance that is deemed objectively reasonable, and the term "parity benchmark" to describe the level of service the incumbent LEC provides to its affiliates or retail customers. WorldCom Comments at 46, n. 111. Other commenters have used different terminology, using "benchmark standards" to refer to objectively acceptable levels of performance and "parity standards" when comparing levels of performance. In the interests of clarity, WorldCom now adopts the industry convention of benchmark standards and parity standards.

[6] A Schedule of Damages and Remedy Calculation Examples are attached as Attachment A.

[7] WorldCom Comments at 47.

[8] *See, e.g.*, WorldCom Comments at 9-12.

Report attached to BellSouth's comments and the "Competition for Special Access Services, High-Capacity Loops, and Interoffice Transport" on which the BOCs rely are neither analytically sound nor correct in their conclusions.

1. Eastern Management Group Report

BellSouth cites the Eastern Management Group Report (EMG Report) to support its claim that "there are substantial alternatives to BellSouth provided special access."[9] The EMG Report, however, relies on inaccurate input data and a flawed methodology to reach a conclusion that is at odds with the facts. In fact, the Eastern Management Group's entire analysis appears to be based on the erroneous premise that there is a greater than 30 percent chance that a given competitive LEC serves any particular building.[10] In reality, however, only about *5 percent* of all commercial customer locations are served by competitive carriers' networks.[11]

All of the EMG Report's subsequent conclusions are undermined by its reliance on the 30 percent assumption. For example, the EMG Report uses its erroneous initial assumption as an input into further calculations which leads to the conclusion that a competitive carrier has a 76 percent chance of finding a non-incumbent LEC source of special access within BellSouth's territory.[12] This conclusion, if true, would make BellSouth's territory easily the most competitive region in the country, with a far higher

[9] BellSouth Comments at 19.

[10] EMG Report at 7.

[11] WorldCom Comments at 11.

[12] EMG Report at 7. To the extent that the EMG Report's logic can be followed, it appears that Eastern Management assumes that the probability that a given competitive LEC serves a building "on-net" is 30.9 percent, and then tries to calculate the probability that a given building will be on-net if there are multiple competitive LECs. But the probability that a given competitor serves a given building "on-net" is far less than 30.9 percent, and Eastern Management's assumption that the probability that a building is served by competitive LEC A is independent of the probability that the building is served by competitive LEC B is invalid.

percentage of buildings served by competitive carriers than any other area – even New York City[13] – which is clearly not the case.

2. Report on "Competition for Special Access Services, High-Capacity Loops, and Interoffice Transport"

The BOCs and USTA repeatedly cite the "Competition for Special Access Services, High-Capacity Loops, and Interoffice Transport" report (High Cap Report), filed with the BOCs' "High Cap" petition in CC Docket No. 96-98, to support their claims about competition for interstate special access services. That report, however, has been thoroughly refuted. As WorldCom and other commenters in CC Docket No. 96-98 showed, virtually all of the report's claims concerning the scope of competitive LEC networks – the number of competitive LEC fiber networks, competitive LEC fiber miles, and "on-net" buildings – are incorrect.[14] Similarly, the report's oft-repeated claim that competitive LECs have a 36 percent share of the interstate special access market is at odds with the Commission's own data. The Commission's recently-released 2000 revenue report shows that competitive LECs have only a 12.5 percent share of the interstate special access market.[15] Even this figure overstates the true level of competition in the market, because it includes revenues from the resale of incumbent LEC interstate special access services.

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[13] *See* WorldCom Comments at 10-11; New York Public Service Commission, *Opinion and Order Modifying Special Services Guidelines for Verizon New York Inc., Conforming Tariff, and Requiring Additional Performance Reporting*, Case Nos. 00-C-2051, 92-C-0665 at 7 (June 15, 2001) (*Special Services Order*); ALTS, *The State of Local Competition 2001*, at 28 (2001), *available at http://www.alts.org/filings/022001annualreport.pdf* (last visited January 18, 2002).

[14] WorldCom Comments, CC Docket No. 96-98, June 11, 2001, Attachment A.

[15] In 2000, competitive LECs had $1.416 billion in interstate special access and private line revenue, whereas incumbent LECs had $9.825 billion in interstate special access and private line revenue. Industry Analysis Division, "Telecommunications Industry Revenues 2000," January 2002, Tables 5 and 6.

Verizon relies on this same flawed report to support its claim that WorldCom and AT&T provide special access service in 200 markets.[16] Verizon arrives at this misleading figure by dividing each metropolitan area into multiple "markets." For example, in the Washington, DC metropolitan area, Verizon counts Washington, DC, Bethesda, MD, Fairfax, VA, Reston, VA, Alexandria, VA and Tyson's Corner, VA as six separate "markets."[17]

C. "Like" Services Under Section 202(a)

Verizon claims that, for purposes of section 202(a), special access services provided to end users are not "like" special access services provided to carriers. Verizon's claim is based in large part on its contention that the product mix it provides to end-user customers is different than the product mix it provides to its carrier customers. Specifically, Verizon contends that the special access services it provides to end users consist predominantly of DS-0 services, the majority of which are analog. Verizon's claims are not supported by the facts, however.

Data the incumbent LECs have filed with the Commission show that end users purchase significant amounts of DS-1 and DS-3 special access services from the incumbent LECs.[18] For example, of the $44.5 million end users spent on BellSouth's special access services in 1998, over $30 million was spent on DS-1 and DS-3 services – $12.8 million on DS-1 services and $18.1 million on DS-3 services.[19] Similarly, of the $80 million Southwestern Bell earned in end-user special access revenue, $38 million

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[16] Verizon Comments at 5.

[17] The source for the 200 market figure is the High Cap Report, which in turn cites (at footnote 6), a market research study prepared by the New Paradigm Resources Group. Chapter 9 of that report lists the "markets" attributed to WorldCom and AT&T.

[18] All DS-1 and DS-3 circuits are digital.

[19] BellSouth Tariff FCC No. 1, Transmittal No. 489, Appendix A, Exhibit A-3, page 3.

came from DS-1 services, while an additional $7 million came from DS-3 services.[20] These results are not surprising given that end-user purchasers of special access services include large businesses that construct their own private data networks and Internet service providers that require high-capacity circuits to connect customers to their Internet Protocol networks.

As Verizon states, whether two or more telecommunications services are "like" within the meaning of section 202(a) depends on whether they are functionally equivalent.[21] In determining functional equivalence, the FCC must "look to the nature of the services offered" and ascertain whether customers view them as performing the same functions.[22] A DS-1 special access circuit provided to an end user is "functionally equivalent" to a DS-1 special access circuit provided to a carrier customer. In both cases, the customers are receiving an unswitched transmission path of the same capacity between two or more points to use for their own purposes. The customers would therefore perceive the two special access circuits to be "functionally equivalent," and therefore "like" for purposes of section 202(a).[23]

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[20] SWBT Tariff FCC No. 73, Transmittal No. 2740, Attachment 4.

[21] Verizon Comments at 16; *see, e.g.*, *MCI v. FCC*, 917 F.2d 30, 39 (D.C. Cir. 1990).

[22] *MCI v. FCC*, 917 F.2d at 39.

[23] WorldCom recognizes that a DS-0 special access circuit may not be functionally equivalent to a DS-3 special access circuit. For that reason, the Joint Competitive Industry Group has proposed that incumbent LECs report separately on each type of special access circuit and has proposed different provisioning intervals for different types of circuits. The relevant question is not whether Verizon is provisioning DS-0 special access circuits faster than DS-3 special access circuits. Rather, the germane question is whether the incumbent LEC is provisioning DS-1 special access circuits to its own end-user customers or to its affiliates – including a BOC's section 272 affiliate following section 271 approval – faster than it is provisioning the same type of circuits to its non-affiliated carrier customers.

D. The FCC's 1985 Waiver Order

Contrary to BellSouth's assertion, the Commission's 1985 waiver of the requirement that incumbent LEC tariffs specify installation intervals is entirely consistent with Commission action to ensure that incumbent LEC provisioning performance is just, reasonable, and not unreasonably discriminatory.[24] Indeed, the 1985 order granting the waiver discusses the Commission's concern that incumbent LECs could discriminate in favor of certain carriers and provide inadequate notice of the length of time necessary to order particular facilities.[25] The Commission waived the tariffing requirement only because it found that cross-referencing schedules outside the tariff would be an acceptable means of addressing those concerns. However, the Commission permitted cross-referencing of service interval information only on the condition that "rates are in no way pegged to service order intervals and all references to 'standard,' 'negotiated,' 'short,' etc. order intervals are deleted from the tariffs."[26]

Recent incumbent LEC tariff changes do not comply with the conditions laid out in the *Waiver Order*. For example, in the past year, both BellSouth and Verizon have introduced "expedite" charges that apply whenever the interval requested by the customer is shorter than these incumbent LECs' "standard intervals." [27] Contrary to the terms of the *Waiver Order*, both BellSouth and Verizon provide service interval information only in cross-referenced service interval guides, effectively "pegging" their rates to service

[24] BellSouth Comments at 8-9.

[25] *See* Petitions for Waiver Concerning 1985 Annual Access Tariff Filings, *Memorandum Opinion and Order*, 1985 FCC LEXIS 3191 at ¶ 18 (rel. June 7, 1985) (*Waiver Order*).

[26] *Id.* at ¶ 19.

[27] *See* WorldCom Comments at 26.

intervals that are not listed in their tariffs. The Commission should take this opportunity to clarify that these incumbent LEC practices violate the terms of the *Waiver Order*.

Cross-referencing to documents outside the tariff enables a carrier to change the application of a rate "at will and without notice" and could "result in different carriers paying different rates for the same service."[28] In the case of the BellSouth and Verizon expedite charges, for example, the incumbent LECs could increase customers' costs without warning by simply increasing the standard interval listed in the cross-referenced access interval guide. Because the change in the standard interval would not require a change in the tariff, customers would have no opportunity to challenge the cost increase under Section 204 of the Communications Act, 47 U.S.C. § 204.[29] The risks of such incumbent LEC actions are high; as BellSouth points out in its comments, incumbent LECs frequently change their standard intervals.[30]

E. Cost of Implementing of Special Access Performance Measurements

Both BellSouth and SBC assert that the development and implementation of special access performance measurements would cause them to incur significant cost increases, and that those increases would have to be passed on to their customers.[31] These claims are not only false, they are logically inconsistent with other statements central to the BellSouth and SBC pleadings.

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[28] Southwestern Bell Telephone Company FCC No. 68, Transmittal No. 1678, *Order*, 4 FCC Rcd 2624 (1988).

[29] As the Commission previously has found, basing the application of a rate on a cross-referenced document "constitute[s] a fundamental flaw in the tariff's clarity." Bell Atlantic-Delaware, Inc. et al. v. Global NAPs, Inc., *Order on Reconsideration*, 15 FCC Rcd 5997, 6006 (2000).

[30] BellSouth Comments at 9.

[31] SBC Comments at 4; BellSouth Comments at 11.

As WorldCom has explained, the adoption of the Joint Competitive Industry Group's proposed measurements would eliminate the need for incumbent LECs to comply with certain existing ARMIS reporting requirements.[32] Thus, there would be no net increase in incumbent LEC reporting obligations. Moreover, given SBC's claim that it already offers a host of standard and customized performance measures to its special access customers,[33] it is difficult to see how requiring standardized performance reporting would increase its costs.

In addition, the assertion that the alleged cost increases would have to be passed on to customers is inconsistent with the claim, made on nearly every page of BellSouth's and SBC's comments, that the special access market is competitive. In a truly competitive market, it would not be prudent for a provider of special access services to increase prices to recover costs that are incurred only by that provider. Nonetheless, BellSouth argues that the Commission would have to allow it to make an exogenous adjustment to reflect the full costs of implementing performance metric reporting.[34] If the special access market truly were competitive, however, BellSouth would not be able to make an exogenous adjustment that would result in higher special access prices without losing customers.

To the extent that the incumbent LECs incur additional costs to develop and implement better performance metrics and reporting, these expenditures will improve the perceived quality and dependability of their services in the eyes of purchasers. This, in turn, will help the incumbent LECs hold on to customers and earn higher profits, as

[32] WorldCom Comments at 42-44.
[33] SBC Comments at 11-13.
[34] BellSouth Comments at 11, footnote 7.

competition expands in the special access market.[35] The only reason that the incumbent LECs are fighting the implementation of these requirements is because they hope to make even more money by engaging in anticompetitive behavior that will harm competitors and consumers.

F. SBC's MVP Tariff

SBC contends that there is no need for Commission-mandated performance metrics and penalties for special access services because it has already met customer demand for performance standards as a result of its Managed Value Plan (MVP) tariffs.[36] SBC suggests that, under the MVP tariff, it is subject to stringent performance standards and that the tariff contemplates payment of liquidated damages in the event it misses a target.[37]

SBC's MVP tariff is a volume and term discount plan available to only a small number of large carrier customers (such as WorldCom) that are able to meet its volume requirements. Even for those carriers that qualify for the MVP, however, the shortcomings of the service delivery guarantees and the associated penalties render these guarantees virtually meaningless. For example, a customer must meet a minimum annual revenue level to be eligible to obtain payment for poor performance. Thus, if SBC's poor performance causes WorldCom to lose customers and this, in turn, causes WorldCom to fall short of its annual revenue commitments under the MVP, SBC does not have to compensate WorldCom no matter how poor SBC's performance was.

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[35] In fact, in a truly competitive market one would expect to see BellSouth and other incumbent LECs offering their special access customers Service Level Agreements (SLAs) with iron-clad service level guarantees as a way to differentiate their services and gain market share. The incumbent LECs lack the incentive to offer SLAs for special access services, however, because they already dominate the market for these services.

[36] SBC Comments at 3, 11-14.

[37] *Id.*

SBC also has set the bar for its performance under the MVP so low that it could provide unreasonably poor performance and still meet the standards. In addition, because SBC's performance results are averaged on an annual basis, SBC can miss the MVP's targets for the majority of the year and then avoid paying credits by exceeding the standards for just a few months. The MVP's annualized performance plan also contains an "eligible point scoring system" under which it assigns a total of 144 points covering each metric on a monthly basis and provides for credits only if the sum of the points at the end of a year totals 103 or less (*i.e.*, a score of 71.5% or less). This built-in "forgiveness" significantly reduces the likelihood of obtaining credits for poor performance. Moreover, the potential remedy amount – 1 percent of the annual customer revenue – is far too small to provide SBC with an incentive to meet its stated targets. For all these reasons, the MVP does not provide plan participants with a reasonable level of performance guarantees. Therefore, it is not an adequate substitute for Commission-mandated special access performance measures, standards and reporting requirements.

SBC also cites its collaboration with individual customers to develop special access performance plans tailored to "the customer's specific needs."[38] While SBC does report to WorldCom on several requested metrics on a monthly basis, the metrics SBC reports on are not sufficiently disaggregated, nor are the business rules clearly defined or consistently followed. In addition, there are no penalties associated with poor performance results and the reports are deemed confidential and proprietary, which sharply limits WorldCom's ability to use these reports to pursue remedies. Finally, while it is true that SBC meets with WorldCom on a quarterly basis to discuss service

[38] SBC Comments at 12.

improvement plans, WorldCom has little if any leverage to demand much needed changes to SBC's provisioning efforts.

G. The New York Public Service Commission's Conclusion that Verizon Appears to Discriminate Against its Carrier Customers

As WorldCom noted in its initial comments, the New York Public Service Commission (NY PSC) concluded that it appears that "Verizon treats other carriers less favorably than its retail customers" regarding the provisioning of special access services.[39] Verizon now claims that this conclusion is suspect because it "was not based on the record of a full, evidentiary hearing...."[40] This objection is disingenuous.

The NY PSC's finding that there is a 20 percentage point difference in Verizon's provisioning performance for its retail and wholesale customers was based, at least in part, on data provided by *Verizon itself*.[41] For Verizon to suggest now that "no evidence was presented to support such a conclusion" is simply misleading, especially in light of the fact that the evidence was supplied by Verizon. As the NY PSC's *Special Services Order* makes clear, Verizon had the opportunity to refute the evidence against it, but failed to do so:

> Verizon denies discrimination, but provides no data to explain the 20% difference in performance or to refute the prima facie indicia of discrimination. . . . Accordingly, we find that Verizon has failed to refute this prima facie evidence indicating it provides special wholesale services in a discriminatory manner.[42]

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[39] *Special Services Order* at 5; *id.* at 16 (stating that "Verizon provides inferior service to competitive carriers in the provisioning of special services.").

[40] Verizon Comments at 11 n. 26.

[41] *NY Special Services Order* at 5 (finding that Verizon meets only 76 percent of its provisioning appointments for wholesale customers, compared to 96 percent for its retail customers).

[42] *Id.* at 6.

The NY PSC subsequently affirmed its *Special Services Order*, rejecting Verizon's Petition for Rehearing.[43] Verizon should not be allowed to use its own inaction as a basis for claiming that the NY PSC acted without sufficient evidence.

Verizon now attempts to explain the disparity between its performance for its carrier and retail customers by stating that it can renegotiate appointments more readily with its retail end-user customers. The disparity cannot be justified, however. Verizon establishes the due date and should be held accountable for meeting it, regardless of whether the customer is an end user or a carrier. It is clear that the only way for competitors and the Commission to ascertain whether discriminatory behavior is occurring is for the Commission to require incumbent LECs to report on their provisioning activity for competitors, affiliates and end-user customers.

H. Metrics Proposed by other Parties

Several commenters offered specific proposals for metrics. The Joint Competitive Industry Group's proposal captures all meaningful elements of these proposals. Qwest, for example, offers five voluntary measurements for the Commission's consideration,[44] each one of which is incorporated in the Joint Competitive Industry Group's metrics.[45] Moreover, the Joint Competitive Industry Group's metrics address problems, such as the potential for backlogs in Access Service Requests (ASRs),

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[43] New York Public Service Commission, *Order Denying Petition for Rehearing and Clarifying Applicability of Special Services Guidelines*, Case Nos. 00-C-2051, 92-C-0665 (December 20, 2001).

[44] Qwest Comments at 10.

[45] Qwest's "Order Confirmation" is equivalent to the Joint Competitive Industry Group "FOC Receipt"; "Percentage Of On-Time Performance" corresponds to the Joint Competitive Industry Group "On Time Performance To FOC Due Date"; "Installation Quality" is captured by Joint Competitive Industry Group's "New Installation Trouble Report Rate"; "Time To Restore" is covered by Joint Competitive Industry Group's "Mean Time to Restore"; and, finally, "Repeat Trouble Rate" is captured by Joint Competitive Industry Group's "Repeat Trouble Report Rate."

that are not addressed in Qwest's proposal.[46] The Joint Competitive Industry Group's proposal also covers Sprint's proposed metrics, with the exception of those Sprint proposed to measure billing performance.[47] The Joint Competitive Industry Group's proposal also has the advantage of including standards as well as metrics.[48]

Mpower also proposed metrics (presumably the highlighted metrics within Mpower's "Exhibit A").[49] These metrics were originally drafted for application to unbundled network elements (UNEs). Nevertheless, the Joint Competitive Industry Group metrics encompass Mpower's proposed metrics to the extent they are applicable to special access services. Of Mpower's fourteen proposed metrics, thirteen are captured within the Joint Competitive Industry Group proposal. The remaining metric is unique to UNEs and does not apply to special access services.

I. Individually Tailored Metrics

Some commenters contend that any performance measures and standards adopted by the FCC must be tailored to suit each individual carrier to whom those measures and

[46] Experience has shown, especially with Verizon, that if there is no measure to capture occasions when the incumbent LEC simply does not respond to the ASR (measured by the Joint Competitive Industry Group's metric JIP-SA-2, FOC Receipt Past Due) or the FOC Due Date passes and the order is not completed (measured by metric JIP-SA-7), then a backlog could grow undetected, creating substantial problems for both the competitor and the incumbent LEC. Any metrics adopted in this proceeding must account for this backlog.

[47] Sprint Comments, Appendix A.

[48] Sprint's suggestion that the FCC adopt metrics and then have a forum to discuss applicable standards is impractical, especially given that the incumbent LECs are likely to delay any standards-setting process as long as possible. Industry forums can work well in the context of section 271 applications because the BOCs have clear incentives to resolve issues quickly. An industry forum is less likely to be effective in the context of special access provisioning, however, because the incumbent LECs have no incentive to reach an expeditious resolution of the issues raised by the competitive industry.

[49] Mpower Comments at 15-16, and Exhibit A.

standards apply.[50] This argument might have some merit if the metrics and standards were to be imposed on a wide array of carriers. However, as WorldCom made clear in its initial comments, it proposes that the performance measurements, standards and remedies discussed in its comments and in the Joint Competitive Industry Group's proposed metrics be applied only to Tier 1 incumbent LECs.[51] When applied to such a relatively homogeneous group, uniform metrics and standards are both sensible and administratively efficient. For example, all the BOCs have substantially similar provisioning processes. Adopting individual performance plans for each Tier 1 incumbent LEC would consume Commission and competitor resources without resulting in any material benefit.

J. Other Proceedings

WorldCom disagrees with those parties that ask the Commission to delay a decision in this proceeding until it has completed the Triennial Review.[52] As WorldCom explained in its initial comments, the BOCs' incentives to provide poor quality special access services increase as they continue to gain section 271 authority to provide in-region interLATA services. It is therefore imperative that the Commission act expeditiously to adopt performance metrics, mandate reporting on these metrics and adopt a remedy plan for special access provisioning. More than forty-five parties representing a wide variety of interests and business plans have filed comments in this proceeding, providing the Commission with an ample record to take such actions. There

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[50] *See, e.g.*, SBC Comments at 15 (arguing that the FCC should not impose "one size fits all" performance measures).

[51] WorldCom Comments at 5, n. 4.

[52] Qwest Comments at 6.

simply is no reason for the Commission to delay action on this important matter pending the outcome of any other proceeding.

K. The Section 208 Complaint Process

As WorldCom explained in its initial comments, the current section 208 complaint process has proven ineffective in curbing incumbents' abuse of their power in the special access market, or resolving special access provisioning and maintenance disputes.[53] For example, it is difficult for a competitive carrier to show successfully that an incumbent LEC's performance is unreasonable under section 201(b) when there is no established standard for "reasonable" performance.[54] The FCC can rectify this problem by adopting the metrics and standards proposed by the Joint Competitive Industry Group. The Commission should also adopt a streamlined section 208 process for special access provisioning complaints to ensure expeditious resolution of poor or discriminatory performance by the incumbent LECs.

L. Firm Order Confirmations

In its initial comments, WorldCom detailed many of the problems caused by the incumbent LECs' failure to provide Firm Order Confirmations (FOCs) in a reasonable time period, as well as their failure to adhere to the due dates established in the FOCs. Indeed, Verizon readily admits that it generally waits five to seven business days before issuing a FOC, and that it will issue a FOC even when it has failed to establish that facilities exist to provide the requested service.[55] In addition, as Cablevision Lightpath

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[53] WorldCom Comments at 37-38.

[54] In fact, it is likely that the small number of section 208 complaints cited by the incumbent LECs as evidence of their adequate performance is attributable to the difficulties competitive carriers have in proving that a particular provisioning practice is "unreasonable" under section 201(b).

[55] Verizon Comments at 18.

noted in its comments, even where facilities are available, Verizon fails to reserve circuits before issuing a FOC.[56]

By contrast, Verizon states that it "typically does not provide its end user customers a due date until it is able to confirm that facilities exist and service can be provisioned."[57] Verizon and all other incumbent LECs should be required to follow this same procedure when provisioning orders from their carrier customers and establish due dates for all customers consistent with facilities availability.[58]

M. Performance Metrics and Standards

Commenters raised a number of issues regarding the scope and nature of the performance metrics and standards. As explained below, the metrics and standards adopted in this proceeding should: 1) be mandatory; 2) apply only to carriers with market power; 3) include data on performance for end users; and 4) include data on switched transport.

Qwest acknowledges the need to adopt uniform definitions and metrics to govern the provisioning and maintenance of special access, but contends that the use of such definitions and measures should be voluntary. WorldCom disagrees. The record in this proceeding clearly establishes that large incumbent LECs dominate the market for special access services. In the absence of a competitive market, these carriers lack the incentive to provide reasonable, nondiscriminatory service to competitive carriers. Therefore, the

[56] Cablevision Lightpath Comments at 2.

[57] Verizon Comments at 18-19.

[58] The need to conduct a facilities check should not excuse an incumbent LEC's failure to meet the performance standard for delivering a FOC. The Joint Competitive Industry Group's FOC Receipt metric (JIP-SA-1) allows the incumbent LECs sufficient time to check their facilities before issuing a FOC.

performance metrics and standards, including the business rules, adopted in this proceeding must be mandatory for the largest incumbent LECs.

For carriers subject to competition, the market will provide the necessary discipline to ensure a high level of performance. For this reason, the metrics and standards adopted in this proceeding should not be imposed on carriers other than the incumbent LECs. WorldCom supports the mandatory application of the performance measures, standards and reporting requirements only to the Tier 1 LECs.[59] Smaller incumbents may adopt these metrics on a voluntary basis.

In addition, as WorldCom noted in its initial comments, it is imperative that the monthly performance reports generated by incumbent LECs include data on the provisioning to both end-user customers and to the BOCs' section 272 affiliates. As the incumbent LECs admit, the work involved in provisioning special access circuits is the same for carriers (and presumably, for affiliated carriers) and end-user customers. Therefore, the reports should reflect the incumbents' performance for all three sets of customers. This will make it easier for the Commission and other competitors to detect any unreasonably discriminatory conduct by the incumbents.

[59] *See, e.g.*, NECA Comments at 3, 5.

III. CONCLUSION

For the reasons set forth above, as well as in WorldCom's initial comments, the Commission should adopt the Joint Competitive Industry Group's proposed ILEC Performance Measurements and Standards in the Ordering, Provisioning, and Maintenance and Repair of Special Access Service and Offered Installation Intervals for interstate special access services provided by Tier 1/Class A incumbent LECs. The Commission should mandate monthly reporting by the incumbent LECs with respect to these proposed metrics and standards for the incumbent LECs' affiliates, end-user customers and competitors and should enforce the performance metrics by adopting the remedy plan proposed by WorldCom.

Lisa B. Smith
Lisa R. Youngers
WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036
(202) 887-2992

Ruth Milkman
Gil M. Strobel
Lawler, Metzger & Milkman
1909 K Street, NW
Suite 820
Washington, DC 20006
(202) 777-7700
gstrobel@lmm-law.com

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ATTACHMENT A

SCHEDULE OF DAMAGES

General Principles Underlying Damages Calculations

Remedy Methodology

A remedy is owed if the actual performance fails to meet the benchmark standard or parity standard[1] during the reporting period. The remedy calculation is the sum of three components: "base," "magnitude," and "duration."

1. The Base remedy is assessed on the number of circuits required to increase the actual performance to the benchmark standard or parity standard during the reporting period, or on the number of circuits for which the benchmark standard or parity standard was exceeded during the reporting period.
2. The Magnitude remedy is assessed if the actual performance meets or falls below the magnitude escalator threshold during the reporting period.
3. The Duration remedy is assessed if the benchmark standard or parity standard is not met for 2 or more consecutive periods or if the benchmark standard or parity standard is not met in any 5 or more non-consecutive periods during the calendar year.

Remedy Calculation

Remedy Owed = Base + Magnitude + Duration

1. Base = Remedy occurrences x Base rate for circuit type

2. Magnitude = Remedy occurrences x (Magnitude Factor x Base rate for circuit type)

3. Duration = Remedy occurrences x (Duration Factor x Base rate for circuit type)

A Duration Remedy is owed when there are two (2) consecutive periods where the actual performance fails to meet the benchmark standard or parity standard. The Duration Factor is initially equal to zero (0) and operates in a step function – one step reduction for each compliant period and one step increase for each two consecutive periods of non-compliance. For each compliant period, the Duration Factor equals the prior period Duration Factor less one (1). For each consecutive non-compliant period, the Duration Factor equals the prior period Duration Factor plus one (1). For each non-consecutive non-compliant period, the Duration Factor equals the prior period Duration Factor. The Duration Factor cannot be reduced below zero (0).

Period	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep
Compliant	No	No	No	Yes	No	No	Yes	Yes	No
Duration Factor	0	1	2	1	1	2	1	0	0
Duration Remedy Owed	No	Yes	Yes	No	No	Yes	No	No	No

If at the end of the calendar year no Duration Remedy was paid and there were 5 or more non-consecutive periods of non-compliance, then a Duration Remedy would be owed for chronic poor performance. The Duration Remedy would be paid for each period not in compliance and calculated by the Base, for the respective period, times the Duration Factor for that period. The Duration Factor would increase by one for each non-compliant period during the calendar year. For example, the Duration Factor would be: one (1) for the first (1st) period of non-compliance; two

[1] In its initial comments WorldCom used the term "standard" to refer to a level of performance that is deemed objectively reasonable, and the term "parity benchmark" to describe the level of service the incumbent LEC provides to its affiliates or retail customers. WorldCom Comments at 46, n. 111. Other commenters have used different terminology, using "benchmark standards" to refer to objectively acceptable levels of performance and "parity standards" when comparing levels of performance. In the interests of clarity, WorldCom now adopts the industry convention of benchmark standards and parity standards.

(2) for the second (2nd) period of non-compliance; three (3) for the third (3rd) period of non –compliance; four (4) for the fourth (4th) period on non-compliance; and five (5) for the fifth (5th) period of non-compliance.

Summary of Damages Calculation for Failure to Meet Metric Standard

	Standard	Remedy Occurrences	Base Remedy	Magnitude Escalator[2]
Metrics				
FOC Receipt	=>98.0% within 2 business days for DS0, DS1 => 98.0% within 5 business days for DS3 and above	Remedy occurrences = [Count of FOCs received where ((FOC Receipt Date – ASR sent date)> Benchmark Standard Business Days) -(1.9% x Count of FOCs received during the reporting period)].	DS0 $10 DS1 $40 DS3 $150	Threshold: 93.0% Magnitude Factor 1 if Actual Performance % is 88.0% - 93.0% ($40) 2 if Actual Performance % is 83.0% - 87.9% ($80) 4 if Actual Performance % is 78.0% - 82.9% ($160) 6 if Actual Performance % is less than 78.0% ($240)
FOC Receipt Past Due	Less than 2.0% FOC Receipt Past Due – without open query/reject	Remedy occurrences = [(Count of ASRs without a FOC Received, and a query/reject not open, where (End of Reporting Period – ASR Sent Date > Expected FOC Receipt Interval)) - (1.9% x Total number of ASRs sent during reporting period)]	DS0 $30 DS1 $120 DS3 $450 OCx $1050	Threshold: 3.0% Magnitude Factor 1 if Actual Performance % is 3.0% - 3.9% ($120) 2 if Actual Performance % is 4.0% - 4.9% ($240) 4 if Actual Performance % is 5.0% - 5.9% ($480) 6 if Actual Performance % is 6.0% or greater ($720)

[2] The magnitude escalator remedy per DS1 circuit is shown as an example in parentheses following the percentage tier. For DS0, DS3, and OCx remedies, simply multiply the base remedy by the magnitude factor (1, 2, 4, 6) to calculate the per circuit remedy.

Metrics	Standard	Remedy Occurrences	Base Remedy	Magnitude Escalator
Offered versus Requested Due Date	100.0% offered with CRDD (where CRDD => ILEC Stated interval	Remedy occurrences = [(benchmark standard % - Actual performance %) x (Total number of ASRs where (CRDD – ASR Sent date) => ILEC Stated Interval)]	DS0 $10 DS1 $40 DS3 $150 OCx $350	Threshold: 95.0% Magnitude Factor 1 if Actual Performance % is 90.0% - 95.0% ($40) 2 if Actual Performance % is 85.0% - 89.9% ($80) 4 if Actual Performance % is 80.0% - 84.9% ($160) 6 if Actual Performance % is less than 80.0% ($240)
On Time Performance To FOC Due Date	=> 98.0% on time to FOC Due date with CNR consideration	Remedy occurrences = [(Benchmark standard % - Actual performance %) x (Count of Circuits Completed)]. The count of circuits completed during the reporting period includes all circuits, with and without a Customer Not Ready (CNR) code.	DS0 $30 DS1 $120 DS3 $450 OCx $1050	Threshold: 93.0% Magnitude Factor 1 if Actual Performance % is 88.0% - 93.0% ($120) 2 if Actual Performance % is 83.0% - 87.9% ($240) 4 if Actual Performance % is 78.0% - 82.9% ($480) 6 if Actual Performance % is less than 78.0% ($720)
Days Late	Average < 3.0 days late	Remedy occurrences = Count of Circuits Completed 3 Days or more beyond ILEC Committed Due Date without a Customer Not Ready (CNR) code.	DS0 $10 DS1 $40 DS3 $150 OCx $350	Threshold: 3.5 days Magnitude Factor 1 if Actual Performance is 3.5 – 3.9 days ($40) 2 if Actual Performance is 4.0 – 4.4 days ($80) 4 if Actual Performance is 4.5 – 4.9 days ($160) 6 if Actual Performance is 5.0 or greater ($240)

Metrics	Standard	Remedy Occurrences	Base Remedy	Magnitude Escalator
Past Due Circuits	Less than 3.0% greater than 5 days beyond FOC Due Date for % Past Due Circuits – Total ILEC Reasons	Remedy occurrences = [(Count of all Circuits greater than 5 days beyond the FOC Due date that have not been reported as completed for Total ILEC Reasons) - (2.9% x Count of all Circuits not completed and past the FOC Due date, for all missed reasons, at the end of the reporting period)]	DS0 $30 DS1 $120 DS3 $450 OCx $1050	Threshold: 4.0% Magnitude Factor 1 if Actual Performance % is 4.0% - 4.9% ($120) 2 if Actual Performance % is 5.0% - 5.9% ($240) 4 if Actual Performance % is 6.0% - 6.9% ($480) 6 if Actual Performance % is 7.0% or greater ($720)
New Installation Trouble Report Rate	< = 1.0 Trouble Reports per 100 circuits installed	Remedy occurrences = [(Count of trouble reports within 30 calendar days of installation) – (Total Number of Circuits installed in the Report Period / 100)]	DS0 $10 DS1 $40 DS3 $150 OCx $350	Threshold: 1.5 per 100 Magnitude Factor 1 if Actual Performance is 1.5 – 1.9 Trouble Reports per 100 circuits installed ($40) 2 if Actual Performance is 2.0 - 2.4 Trouble Reports per 100 circuits installed ($80) 4 if Actual Performance is 2.5 – 2.9 Trouble Reports per 100 circuits installed ($160) 6 if Actual Performance is 3.0 or greater Trouble Reports per 100 circuits installed ($240)

Metrics	Standard	Remedy Occurrences	Base Remedy	Magnitude Escalator
Failure Rate	< =10.0% annualized for below DS3 < = 10.0% annualized for DS3 and above	Remedy occurrences = [(Count of trouble reports resolved during the reporting period) – ((Number of Circuits In Service at the end of the Report Period) x (9.9%/12))]	Below DS3 $25 DS3 & above $250	Threshold: 11.0% Magnitude Factor 1 if Actual Performance is 11.0% - 12.4% ($25) 2 if Actual Performance is 12.5% - 13.9% ($50) 4 if Actual Performance is 14.0% - 15.4% ($100) 6 if Actual Performance is 15.5% or greater ($150)
Mean Time To Restore (MTTR)	<= 2.0 hours for below DS3 <= 1.0 hour for DS3 and above	Remedy occurrences (below DS3) = Count [((Date and Time of Trouble Ticket Resolution Closed to a CLEC or IXC carrier – Date and Time of Trouble Ticket Referred to the ILEC) – (Customer Hold Times)) > 2.0 hours] Remedy occurrences (DS3 and above) = Count [((Date and Time of Trouble Ticket Resolution Closed to a CLEC or IXC carrier – Date and Time of Trouble Ticket Referred to the ILEC) – (Customer Hold Times)) > 1.0 hour]	Below DS3 $75 DS3 & above $750	Threshold: 2.5 hours (below DS3) / 1.5 hours (DS3 and above) Magnitude Factor DS0, DS1 1 if Actual Performance is 2.5 – 2.9 hours ($75) 2 if Actual Performance is 3.0 – 3.4 hours ($150) 4 if Actual Performance is 3.5 – 3.9 hours ($300) 6 if Actual Performance is 4.0 or greater ($450) DS3 and above 1 if Actual Performance is 1.5 – 1.9 hours ($750) 2 if Actual Performance is 2.0 – 2.4 hours ($1500) 4 if Actual Performance is 2.5 – 2.9 hours ($3000) 6 if Actual Performance is 3.0 or greater ($4500)

Metrics	Standard	Remedy Occurrences	Base Remedy	Magnitude Escalator
Repeat Trouble Report Rate	<= 6.0% for below DS3 <= 3.0% for DS3 and above	Remedy occurrences (below DS3) = [(Count of current trouble reports with a previous trouble, reported on the same circuit, in the preceding 30 calendar days) - (Number of Reports in the reporting period x 6.0%)] Remedy occurrences (DS3 and above) = [(Count of current trouble reports with a previous trouble, reported on the same circuit, in the preceding 30 calendar days) - (Number of Reports in the reporting period x 3.0%)]	Below DS3 $25 DS3 & above $250	Threshold: 7.0% (Below DS3) / 4.0% (DS3 and above) Below DS3 Magnitude Factor 1 if Actual Performance is 7.0% - 7.9% ($25) 2 if Actual Performance is 8.0% – 8.9% ($50) 4 if Actual Performance is 9.0% – 9.9% ($100) 6 if Actual Performance is 10.0% or greater ($150) DS3 and above Magnitude Factor 1 if Actual Performance is 4.0% - 4.9% ($250) 2 if Actual Performance is 5.0% – 5.9% ($500) 4 if Actual Performance is 6.0% – 6.9% ($1000) 6 if Actual Performance is 7.0% or greater ($1500)

Example of Remedy Calculation – On Time Performance to FOC Due Date (DS1)

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
DS1 Circuits Completed	100	100	100	100	100	100	100	100	100	100	100	100
Actual Performance %	90.0%	98.0%	65.0%	89.0%	79.0%	99.0%	85.0%	98.0%	82.0%	94.0%	98.0%	70.0%
Benchmark Standard %	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%
Base Remedy												
Base Remedy owed	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	Yes
Occurrences	8	-	33	9	19	-	13	-	16	4	-	28
Remedy Rate	$120	-	$120	$120	$120	-	$120	-	$120	$120	-	$120
Remedy Amount	$960	-	$3960	$1080	$2280	-	$1560	-	$1920	$480	-	$3360
Magnitude Remedy												
Magnitude Remedy owed	Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	No	No	Yes
Factor applied to Base Remedy	1	-	6	1	4	-	2	-	4	-	-	6
Remedy Amount	$960	-	$23760	$1080	$9120	-	$3120	-	$7680	-	-	$20160
Duration Remedy												
Duration Remedy owed	No	No	No	Yes	Yes	No	No	No	No	Yes	No	No
Factor applied to Base Remedy	-	-	-	1	2	-	-	-	-	1	-	-
Remedy	-	-	-	$1080	$4560	-	-	-	-	$480	-	-
Total Remedy Amount	$1920	-	$27720	$3240	$15960	-	$4680	-	$9600	$960	-	$23520

Example of End of Year Duration Remedy – On Time Performance to FOC Due Date (DS1)

	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Sep	Oct	Nov	Dec
Circuits Completed	100	100	100	100	100	100	100	100	100	100	100	100
Actual Performance %	70.0%	98.0%	65.0%	99.0%	75.0%	98.0%	75.0%	98.0%	65.0%	99.0%	70.0%	98.0%
Benchmark Standard %	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%	98.0%
Remedy paid during year												
Base Remedy paid	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Magnitude Remedy paid	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
Duration Remedy paid	No	No	No	No	No	No	No	No	No	No	No	No
EOY Duration Remedy												
Duration factor	1	-	2	-	3	-	4	-	5	-	6	-
Base Rate	$120	-	$120	-	$120	-	$120	-	$120	-	$120	-
Remedy occurrences	28	-	33	-	23	-	23	-	33	-	28	-
Remedy amounts	$3360	-	$7920	-	$8280	-	$11040	-	$19800	-	$20160	-

Total duration remedy would be $70,560 ($3,360+$7,920+$8,280+$11,040+$19,800+$20,160)

CERTIFICATE OF SERVICE

I, Denise Owusu, hereby certify that on this 12th day of February 2002, copies of the foregoing Reply Comments of WorldCom, Inc. were served on the following parties via U.S. mail, except where otherwise noted.

William F. Caton, Acting Secretary
(Electronic Filing)
Federal Communication Commission
455 Twelfth Street, S.W.
Washington, D.C. 20554

Michael Powell**
Chairman
Federal Communication Commission
455 Twelfth Street, S.W.
Room 8-B201
Washington, D.C. 20554

Michael J. Copps**
Commissioner, Common Carrier Bureau
Federal Communication Commission
455 Twelfth Street, S.W.
Room 8-A302
Washington, D.C. 20554

Dorothy Attwood**
Chief, Common Carrier Bureau
Federal Communication Commission
455 Twelfth Street, S.W.
Washington, D.C. 20554

Kevin J. Martin**
Commissioner, Common Carrier Bureau
Federal Communication Commission
455 Twelfth Street, S.W.
Room 8-A204
Washington, D.C. 20554

Kathleen Q. Abernathy**
Commissioner, Common Carrier Bureau
Federal Communication Commission
455 Twelfth Street, S.W.
Room 8-A204
Washington, D.C. 20554

Michelle Carey**
Federal Communication Commission
455 Twelfth Street, S.W.
Washington, D.C. 20554

Uzoma Onyeije**
Federal Communication Commission
455 Twelfth Street, S.W.
Washington, D.C. 20554

Kevin DiLallo
Levine, Blaszak, Block & Boothby, LLP
2001 L Street, N.W.,
Suite 900
Washington, D.C. 20036

Jonathan Askin
Teresa K. Gaugler
Association for Local
Telecommunications Services
888 17th Street, NW
Washington, D.C. 20005

Wayne V. Black
C. Douglas Jarrett
Keller and Heckman LLP
1001 G Street, NW
Suite 500 West
Washington, D.C. 20001

Charles C. Hunter
Catherine M. Hannan
Hunter Communications Law Group
1424 Sixteenth Street, NW
Suite 105
Washington, D.C. 20036

*(** Denotes Hand Delivery)*

James L. Casserly
Sara F. Leibman
Robin E. Tuttle
Angela F. Collins
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004

Richard M. Sbaratta
BELLSOUTH CORPORATION
675 West Peachtree Street, N.E.
Suite 4300
Atlanta, GA 30375-0001

Robert J. Aamoth
KELLEY DRYE & WARREN, LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

Richard M. Rindler
Patrick J. Donovan
Michael W. Fleming
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Thomas G. Aridas
Special Assistant Attorney General
160 N. LaSalle
Suite C-800
Chicago, IL 60601

Anna Sokolin-Maimon, Esq.
Counsel for Metropolitan Telecommunications
44 Wall Street
14th Floor
New York, NY 10005

Howard J. Symons
Michael Pryor
Russ Taylor
Christopher R. Bjornson
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004

Steven A. Augustino
Ronald J. Jarvis
KELLEY DRYE & WARREN, LLP
1200 19th Street, NW
Suite 500
Washington, DC 20036

Patrick J. Donovan
Paul B. Hudson
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Gregg C. Sayre
Associate General Counsel
Eastern Region
Citizens Communications
180 South Clinton Avenue
Rochester, NY 14646

Karen Brinkman
Richard R. Cameron
Elizabeth R. Park
Latham & Watkins
555 Eleventh Street, N.W.
Suite 1000
Washington, D.C. 20004-1304

Russell I. Zuckerman
Senior Vice President & General Counsel
Richard E. Heatter
Vice President, Legal Affairs
Marilyn H. Ash
Counsel - Legal & Regulatory Affairs
175 Sully's Trail - Suite 300
Pittsford, NY 14534

L. Marie Guillory
Daniel Mitchell
National Telephone Cooperative Association
4121 Wilson Boulevard
10th Floor
Arlington, VA 22203

Margot Smiley Humphrey
Holland & Knight
2099 Pennsylvania Avenue
Suite 100
Washington, D.C. 20006

Stuart Polikoff
Organization for the Promotion and Advancement of Small Telecommunications Companies
21 Dupont Circle, NW
Suite 700
Washington, D.C. 20036

Eric J. Branfman
Harry N. Malone
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Susan J. Bahr
Law Offices of Susan Bahr, PC
P.O. Box 86089
Montgomery Village, MD 20886-6089

Richard A. Askoff
National Exchange Carrier
Its Attorney
80 South Jefferson Road
Whippany, NJ 07981

Tony S. Mendoza
Minnesota Department of Commerce
85 7th Place East
Suite 500
St. Paul, Minnesota 55101-2198

Lawrence G. Malone
General Counsel
Brian P. Ossias
Assistant Counsel
Public Service Commission
Of the State of New York
Three Empire State Plaza
Albany, NY 12223-1350

Michelle M. Carey
Chief, Policy and Progam Planning Division
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Robert B. McKenna
Sharon J. Devine
Suite 700
1020 19th Street, NW
Washington, D.C. 20036

Benjamin H. Dickens, Jr.
Gerard J. Duffy
Douglas W. Everette
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW
Suite 300
Washington, D.C. 20037

Max Yzaguirre
Chairman
Rebecca Klein
Commissioner
Public Utility Commission of Texas
1701 N. Congress Avenue
Austin, TX 78711-3326

Richard Juhnke
Jay C. Keithley
Norina Moy
SPRINT CORPORATION
401 9th Street, NW
Suite 400
Washington, DC 20004

Thomas Jones
Christi Shewman
Kelly N. McCollian
Willkie Farr & Gallagher
Three Lafayette Centre
1155 21st Street, Nw
Washington, D.C. 20036

Linda Kent
Lawrence E. Sarjeant
Keith Townsend
UNITED STATES TELECOM ASSOCIATION
1401 H Street, NW
Suite 600
Washington, D.C. 20005

Jeffrey S. Linder
Rebekah Pl Goodheart
WILEY REIN & FIELDING LLP
1776 K Street, NW
Washington, D.C. 20006

Elizabeth Dickerson
LeBoeuf, Lamd, Greene & MacRae
1875 Connecticut Avenue, NW
Washington, D.C. 20009-5728

ITS, Inc.
1231 20th Street, NW
Washington, D.C. 20036

Denise Owusu

Denise Owusu