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FEDERAL COMMUNICATIONS COMMISSION
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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 Offering 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, and 98–141

REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

GEORGE N. BARCLAY
Associate General Counsel
Personal Property Division

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
1800 F Street, N.W., Room 4002
Washington, D.C. 20405
(202) 501–1156

Economic Consultants:

Snavely King Majoros O'Connor & Lee, Inc.
1220 L Street, N.W., Suite 410
Washington, D.C. 20005

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Summary

GSA responds to comments regarding national standards for measuring the performance of incumbent LECs in providing UNEs.

Several parties contend that state commissions are in a better position to maintain surveillance over the activities of incumbent LECs concerning UNEs. However, GSA urges the Commission to reject this view, and heed the great majority of commenters who urge the Commission to take the lead in prescribing performance measures and standards for these facilities and services.

GSA acknowledges that state regulators should be able to prescribe standards that do not conflict with the Commission's rules. However, state regulators and many LECs explain that uniform national guidelines will help maintain consistent service levels, simplify data collection requirements, and cut unnecessary reporting costs for LECs. In addition, competitive LECs document cases of inadequate or slow responses to UNE requests, showing that the Commission's surveillance over incumbent LECs is central to the issue of fostering competition and measuring its viability throughout the nation.

In addition, GSA urges the Commission not to credit arguments that UNE provisioning standards should apply only to the largest incumbent LECs. The smallest carriers should be exempt, but national rules should apply to all carriers with unbundling obligations under the Telecommunications Act. By extending its requirements to all carriers without a "rural" exemption, the Commission will help foster competition in places outside the nation's largest metropolitan areas.

Finally, a competitive LEC aptly notes that a UNE provisioned a month late is hardly better than a UNE never provisioned at all. Thus, the Commission's standards should be comprehensive and span the life–cycle of UNE actions. It makes little difference to a competitive LEC — or to the end users depending on its services — whether a delay was caused by failure to acknowledge an order, failure to provide an operational circuit, or failure to resolve a dispute over billing for the process.

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REPLY COMMENTS
of the
GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA") submits these Reply Comments on behalf of the customer interests of all Federal Executive Agencies ("FEAs") in response to the Notice of Proposed Rulemaking ("Notice") in CC Docket Nos. 01–318, 98–56, 98–147, 96–98, and 98–141 released on November 19, 2001. The Notice seeks comments and replies on issues regarding measurements and standards for assessing the performance of incumbent local exchange carriers ("LECs") in providing unbundled network elements ("UNEs").

I. INTRODUCTION

The Telecommunications Act of 1996 contemplates that it will be impractical for potential competitors to replicate the ubiquitous networks of the incumbent LECs or

their economies of scale during the early phases of market entry.[1] To help compensate for the advantages of the incumbent LECs, the legislation requires them to unbundle their networks and provide non–discriminatory access to interconnections.[2]

In May 2000, the Association for Local Telecommunications Services ("ALTS") submitted comments reporting that efficient access to UNEs is elusive four years after the Telecommunications Act was signed.[3] The Commission instituted this proceeding In response to this report and similar comments by other parties.[4] The objective of the proceeding is to determine whether a national regime of performance measures, standards, reporting requirements, and related enforcement mechanisms should be established to ensure that incumbent LECs provide non–discriminatory access to their competitors.[5]

On January 22, 2002, GSA submitted Comments concerning UNE performance issues in response to the Notice. In those Comments, GSA explained that a comprehensive set of measures, as described in the Notice, is necessary to protect competitive LECs and end users.[6]

In addition to GSA, more than 30 parties submitted comments in response to the Notice. Five state regulatory agencies and more than 25 carriers and carrier associations responded to the Commission's request. In these Reply Comments, GSA responds to the positions and recommendations by those parties.

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1 Telecommunications Act of 1996, Pub. L. No. 104–104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 *et seq.* ("Telecommunications Act"), section 251(c).

2 *Id.*, section 251, (c)(2) and (c)(3).

3 CC Docket No. 98–47, Petition of ALTS, May 17, 2000.

4 Notice, paras. 8–11.

5 *Id.*

6 Comments of GSA, pp. 3–4; pp. 7–9.

II. CONTRARY TO RECOMMENDATIONS BY SEVERAL CARRIERS, THE COMMISSION SHOULD PRESCRIBE NATIONAL PERFORMANCE STANDARDS FOR UNEs.

A. Comments show that uniform guidelines will maintain consistent service levels, and reduce demands on LECs and regulators.

The great majority of parties responding to the Notice urge the Commission to prescribe performance measures and standards covering all incumbent LECs, but a few commenters oppose this step. Most opponents contend that state regulators are in a better position to maintain surveillance over UNE performance levels, but several assert that national rules would place an undue burden on smaller LECs.

Qwest, an incumbent LEC in 15 states and competitive LEC in other jurisdictions, urges the Commission to forego attempting to regulate the provision of UNEs.[7] Qwest documents its own success in negotiating performance measures in many states, and provides descriptions of regulations in various states that should "satisfy any Federal concerns."[8]

Similarly, the Public Utilities Commission of Ohio ("Ohio Commission") voices concern that the Commission may move too aggressively in prescribing requirements that override those established by individual states.[9] The Ohio Commission acknowledges that Federal regulators have an interest in maintaining uniformity in performance measurements and standards applicable to incumbent LECs nationwide.[10] However, the agency urges the Commission not to "cast aside or sacrifice" the progress of state regulators in this regard.[11]

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7 Comments of Qwest Communications International ("Qwest"), p. 2.

8 *Id.*, p. 2 and pp. 17–24.

9 Comments of the Ohio Commission, pp. 2–3.

10 *Id.*, p. 3.

11 *Id.*

Although some commenters urge caution, on balance the parties strongly favor a comprehensive national plan. Indeed, incumbent LECs, who would themselves be subject to the reporting requirements, endorse action by the Commission. For example, BellSouth states:

> At the same time, the development of performance measurements on a state–by–state basis has given rise to two serious problems: (1) the plans that have been ordered are complex and difficult to administer; and (2) there is a lack of consistency between some of the plans that . . . has the potential to ultimately make administrative problems overwhelming.[12]

Similarly, Verizon explains that it has experienced first hand the "regulatory patchwork" of performance measurements.[13] Indeed, the company states that it reports approximately 2.4 million wholesale performance results each month under at least nine separate sets of reporting requirements.[14]

From its perspective as a large and geographically dispersed end user, GSA concurs with the positions expressed by BellSouth and Verizon on this issue. GSA explained that its recent experience in five state regulatory proceedings reveals a confusing and costly diversity in local performance standards regarding UNEs.[15] GSA explained that inconsistency is particularly troublesome for FEAs because predictability and consistency are vital for dispersed end users who contract for telecommunications services nationwide.[16] Also, GSA emphasized that national performance measures will simplify administrative requirements, reduce data

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12 Comments of BellSouth, p. 10.

13 Comments of Verizon Telephone Companies ("Verizon"), p. 1.

14 *Id.*

15 Comments of GSA, pp. 6–7.

16 *Id.*

collection needs, and cut the costs of maintaining several reporting formats for LECs that operate in multiple jurisdictions.[17]

State regulatory agencies also support steps by the Commission to adopt performance standards. For example, the Missouri Public Service Commission ("MoPSC") states that it participates in an open forum at the regional level where five state commissions work together to review performance data for a common incumbent LEC.[18] In spite of this regional activity, MoPSC recommends a joint Federal–state effort for ensuring non–discriminatory access to the networks of all incumbent LECs.[19] Moreover, MoPSC urges the Commission to adopt a data validation and audit requirement for any national performance measurements.[20]

Comments by the People of the State of California and the California Public Utilities Commission ("CPUC") contain a similar view. Although CPUC has adopted an extensive array of performance measures for California, this agency believes that an important step to harmonize state and Federal regulation is to adopt a minimum set of national performance measures and standards.[21] CPUC explains that this step would establish a threshold level of performance necessary for competitive markets and also give a "head start" to states that have not developed their own performance measures.[22]

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17 *Id.*, pp. 8–10.

18 Comments of MoPSC, p. 4.

19 *Id.*

20 *Id.*

21 Comments of CPUC, p. 4.

22 *Id.*

B. Competitive LECs demonstrate that national standards are needed to safeguard against discrimination.

Competitive LECs also urge the Commission to adopt national measures and standards. For example, Allegiance Telecom states that the Commission's proposal to establish national performance rules is "an important and timely next step" in its implementation of the Telecommunications Act.[23]

In its most recent comments addressing the need for national rules, ALTS states, "There can be no doubt that incumbent LEC provisioning of UNEs is characterized by delay, poor quality, and discrimination."[24] Also, ALTS explains that measurements and standards for UNEs would assist in ensuring that services and facilities are provisioned in a just and reasonable manner.[25] Consequently, ALTS proposes that the Commission adopt "a set of performance metrics and standards that tracks the most essential and competitively significant" functions concerning the incumbent carriers' UNEs.[26]

Competitive LECs responding as Joint Commenters also summarize the case in favor of the Commission establishing strong performance standards for UNEs.[27] The Joint Commenters explain that (1) the Commission has ample authority to establish these standards; (2) competitive LECs are dependent on incumbents' facilities to serve their customers; (3) comprehensive standards are necessary to remedy inadequate provisioning; and (4) performance standards are necessary safeguards against

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23 Comments of Allegiance Telecom, p. 3.

24 Comments of ALTS, p. 3.

25 *Id.*

26 *Id.*, p. 4.

27 Comments of Focal Communications Corporation, Pac–West Telecomm, Inc., and US LEC Corp. ("Joint Commenters").

discrimination.[28] Indeed, the Joint Commenters note that the same conditions apply to the provision of special access services by incumbent LECs, so that the Commission should prescribe standards governing provision of special access services as well.[29]

GSA concurs with Allegiance Telecom, ALTS, the Joint Commenters, and the other parties supporting performance measures as a pro–competitive tool. As GSA stated, measurement of the performance of incumbent LECs in meeting requirements to provide UNEs is central to the issue of fostering competition and measuring its viability throughout the nation.[30]

Besides describing the need for performance standards, the Joint Commenters identify the important attributes of the interaction between standards established by the Commission and the standards, if any, set by state regulators. They set two "ground rules" for this process: (1) the Commission's standards should set baseline performance levels that will apply in every state, and (2) state regulators should be permitted to specify additional measures that do not conflict or undermine the Federal rules.[31]

From their perspective as end users, the FEAs concur with the Joint Commenters' recommendations on the Commission's role in this process. GSA urges the Commission to adopt these recommendations to foster more competition and help maintain consistent performance levels for services offered by all LECs throughout the nation.

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28 Comments of Joint Commenters, pp. 9–14.

29 *Id.*, p. 9.

30 Comments of GSA, p. 2.

31 *Id.*, pp. 14–16.

C. Carriers explain that performance reporting requirements should encompass all LECs with unbundling obligations.

Several groups of mid–size and smaller LECs assert that they should be exempt from national requirements concerning performance standards for UNEs. For example, the Independent Telephone and Telecommunications Alliance ("ITTA"), an organization of mid–size LECs, asserts that national performance standards would require a "costly and extensive overhaul" of its members' practices and create "additional regulatory uncertainty" for these carriers.[32] In addition, the National Exchange Carriers Association ("NECA") contends in its comments that national performance measures and standards for provisioning of UNEs are not appropriate for rural incumbent LECs.[33]

GSA urges the Commission to reject requests for widespread exemptions. Although the smallest LECs should be excluded, GSA urges the Commission to establish performance measures and standards for all incumbent LECs that have obligations to provide UNEs.[34]

McLeodUSA is a facilities–based competitive LEC with residential and business customers in 400 markets located in 25 states.[35] From this perspective, the carrier urges the Commission to extend national performance measures and standards to all LECs with unbundling obligations under the Telecommunications

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32 Comments of ITTA, pp. 7–9.

33 Comments of NECA, p. 5.

34 Section 251(f)(1)(A) of the Telecommunications Act exempts "rural" telephone companies from the requirement to unbundle their local networks. As defined in 47 U.S.C. § 153 (37), a carrier is classified as "rural" if it meets one of several criteria, including the fact that its provides exchange service to fewer than 50,000 access lines in total, or had less than 15 percent of its access lines in communities of more than 50,000 population on February 8, 1996.

35 Comments of McLeodUSA, p. 2.

Act.[36] McLeodUSA explains that incumbent LECs routinely impose significant administrative and reporting burdens on competitive LECs.[37] By comparison, uniform national rules will place a minor additional burden on incumbent LECs, and potentially simplify administrative requirements for the mid–size and larger incumbent carriers serving multiple local jurisdictions.[38]

GSA concurs with McLeodUSA's position on this issue. Logically, carriers not required to provide UNEs to competitors should not be required to meet established standards, or report their performance, if they voluntarily unbundle. However, GSA believes that the Commission's UNE performance measures and standards should apply to all mid–size carriers that have unbundling obligations. Indeed, ITTA states that its smallest member company serves just under 100,000 access lines, and the largest serves more than 2,000,000 lines.[39] Uniform measures and standards should not place an undue burden on companies of that size. By extending its requirements to all carriers without a "rural" exemption, the Commission will help foster competition in places outside the nation's largest metropolitan areas.

III. END USERS, CARRIERS, AND REGULATORS URGE THE COMMISSION TO ADOPT A COMPREHENSIVE SET OF PERFORMANCE MEASURES.

Several carriers acknowledge that the Commission should establish a core set of standards for UNEs, but urge the Commission to limit the scope of the performance measures that it employs. For example, SBC Communications ("SBC") asserts that

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36 *Id.*, pp. 9–10.

37 *Id.*, p. 1.

38 *Id.*, pp. 6–7.

39 Comments of ITTA, p. 2.

only "a limited set" of national performance measures critical to competition is necessary to comply with the letter and spirit of the Telecommunications Act.[40]

SBC claims that measures of billing performance are totally unjustified.[41] Also, if the Commission imposes an "order processing standard" for incumbents, the same standard should also apply to competitive LECs.[42] Moreover, SBC asserts that performance results should only be reported on a total basis, with no element–specific or service–specific disaggregations.[43]

GSA urges the Commission to reject these broad limitations. Carriers and regulators describe the need for strong and comprehensive performance standards for UNEs. As the Joint Commenters explain, the Commission's standards may be the only measures in some states, so weak performance standards could be worse than no standards at all.[44]

As a threshold issue, GSA believes that measures and standards for provisioning UNEs should not apply to <u>competitive</u> LECs under any circumstances. CPUC correctly views this issue:

> Given the purpose of performance standards, it does not make sense to apply them to the competitive LECs.[45]

In short, the Telecommunications Act places the obligation to unbundle networks <u>only</u> on incumbent LECs.[46] Competitive LECs are not required to offer UNEs, so it is unreasonable to require them to report voluntary unbundling.

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40 Comments of SBC, p. 7.

41 *Id.*, pp. 28–29.

42 *Id.*, pp. 28–31.

43 *Id.*, p. 31.

44 Comments of Joint Commenters, p. 5

45 Comments of CPUC, p. 6.

46 Telecommunications Act, section 251, (b) and (c)(3).

Several parties specifically discuss the need for performance measures and standards concerning billing. For example, Adelphia Business Solutions ("Adelphia") states that incumbent LECs are slow to resolve billing errors, but quick to seek deposits for alleged failures to make payments that relate to disputes.[47] Moreover, Adelphia states that while it attempts to resolve all disputes through negotiation, it has continuing issues with the incumbent LECs "losing" a dispute or denying its existence without an investigation of the issues that were raised.[48] Finally, Adelphia explains that while interconnection agreements with the incumbent LECs generally describe the dispute resolution process, standards governing incumbents' responses to billing issues are needed to ensure that the issues are resolved in a timely manner.[49]

CPUC also explains the importance of billing measures as a component of the operations support provided by incumbent LECs.[50] In fact, CPUC has implemented nine measures of wholesale billing performance by incumbent LECs — usage timeliness, accuracy of usage feed, bill timelines, usage completeness, recurring charge completeness, non–recurring charge completeness, bill accuracy, timeliness of billing completion notices, and accuracy of mechanized bill feed.[51]

As GSA explained, a comprehensive array of performance measures is necessary to protect competitive LECs and end users.[52] Covad states, "A UNE provisioned a month late is hardly better than a UNE never provisioned at all."[53]

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47 Comments of Adelphia, p. 3.

48 *Id.*, p. 10.

49 *Id.*

50 Comments of CPUC, p. 7.

51 *Id.*, p. 9.

52 Comments of GSA, pp. 7–9.

53 Comments of Covad, p. 6.

Indeed, it makes little difference to a competitive LEC — or to the end users depending on the competitive LEC's services — whether the delay was caused by failure to acknowledge an order, failure to provide an operational circuit, or failure to resolve a dispute over billing for the process.

The Commission's standards should span the life–cycle of UNE actions from ordering to provisioning, as well as maintenance and billing for the necessary capabilities. To provide competitive LECs with a meaningful chance to participate in telecommunications markets, they need timely access to accurate information at each step of the process.

IV. CONCLUSION

As a major user of telecommunications services, GSA urges the Commission to implement the recommendations set forth in these Reply Comments.

Respectfully submitted,

GEORGE N. BARCLAY
Associate General Counsel
Personal Property Division

MICHAEL J. ETTNER
Senior Assistant General Counsel
Personal Property Division

GENERAL SERVICES ADMINISTRATION
1800 F Street, N.W., Rm. 4002
Washington, D.C. 20405
(202) 501–1156

February 12, 2002

CERTIFICATE OF SERVICE

I, MICHAEL J. ETTNER, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 12th day of February 2002, by hand delivery or postage paid to the following parties.

The Honorable Michael K. Powell,
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Kevin J. Martin,
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Michael J. Copps,
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C 20554

Ms. Janice Myles
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, S.W. TW–A325
Washington, D.C. 20554

Qualex International
Portals II
445 12th Street, S.W.
Room CYB402
Washington, D.C. 20554

Editorial Offices
Telecommunications Reports
1333 H Street, N.W., Room 100–E
Washington, D.C. 20005

Ms. Edith Herman
Senior Editor
Communications Daily
2115 Ward Court, N.W.
Washington, D.C. 20037

Michael J. Ettner