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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

REPLY COMMENTS OF COX COMMUNICATIONS, INC.

COX COMMUNICATIONS, INC.

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SUMMARY

This proceeding once again highlights the differences between the goals of ILECs and the requirements of the 1996 Act. ILECs want the Commission to adopt an extremely narrow set of performance standards; to preempt any more stringent standards the states might wish to adopt; to limit enforcement of the standards; to have those standards in effect for the briefest possible time; and to apply measurement and reporting requirements to CLECs that lack market power. The ILEC proposals, especially taken together, would be worse than the status quo, and would leave CLECs effectively unprotected even from willful ILEC misbehavior. Such a result would be inconsistent with the fundamental goals of the 1996 Act, which seeks to develop competition in local telecommunications services.

Cox and other commenters, including several state commissions, have proposed a much more sensible model for the Commission's actions in this proceeding. First, the Commission's performance standards should serve as a backstop to state efforts, and should not overtake any current or future state requirements. Second, enforcement of the standards should be swift and certain, through forfeitures and automatic compensation to CLECs, while not foreclosing the opportunity for CLECs to prove damages through the complaint process. Third, the standards should apply only to ILECs, as only ILEC behavior can damage the development of competition. Fourth, the Commission should adopt standards based on the record of this proceeding, and should not engage in unnecessary workshops. Fifth, the Commission should not adopt a sunset for the standards, but instead should mandate periodic reviews, just as it has for unbundled network elements.

The specific standards adopted in this proceeding should focus on the needs of facilities-based carriers because facilities-based competition creates the most consumer benefits. In

addition to the standards discussed in Cox's initial comments, the Commission should adopt, at a minimum, the standards proposed by WorldCom for Percent Jeopardy Notices, Percent On-Time Completion Notices, Percent Trunk Blocking, Percent Timely Collocation Responses, Percent Collocation Augment Appointments Met, Average Collocation/Augment Interval and NXXs/LRNs Loaded Before LERG Effective Date. Based on the initial comments, Cox also supports adoption of a new metric: Percent ILEC System Updates and Changes Released on Time. The Commission also should, whenever appropriate, adopt measures that are based on absolute performance, rather than parity with the ILEC's retail performance. The Commission has ample authority to adopt absolute measures. Moreover, the creation and evaluation of parity measures is fraught with difficulties that greatly reduce their utility in determining whether ILEC performance is adequate, while absolute measures often are easier to establish and evaluate.

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REPLY COMMENTS OF COX COMMUNICATIONS, INC.

Cox Communications, Inc. ("Cox"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding.¹ The comments demonstrate both the potential benefits and possible risks of this proceeding: Properly calibrated standards focused on ensuring that incumbent local exchange carriers ("ILECs") perform at a level that facilitates competition will be beneficial, but the toothless measures proposed by the ILECs will undo the important work already done by the states.

¹ Performance Measurement and Standards for Unbundled Network Elements and Interconnection, Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection and Operator Services and Directory Assistance, Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Association for Local Telecommunications Services for Declaratory Ruling, *Notice of Proposed Rulemaking*, CC Docket Nos. 01-318, 98-56, 98-147, 96-98 and 98-141, rel. Nov. 19, 2001 (the "Notice").

These reply comments focus on some of the key areas of dispute in the initial comments.² These disputes generally center on the scope of the performance standards regime, but also include questions concerning specific standards to be adopted. As Cox described in its comments, the Commission should adopt a program that acts as a backstop to existing state programs, rather than supplanting them. The program should be limited to ILECs, because only ILEC performance affects the development of competition. The Commission should rely on the record in this proceeding to define specific standards, rather than conducting superfluous workshops, and standards should be evaluated periodically, but should not be subject to a specific sunset. Finally, the specific standards adopted in this proceeding should include all measures necessary to ensure a level playing field for facilities-based competition, which creates the most benefits for consumers.

I. The Commission Should Adopt and Enforce ILEC Performance Standards as a Backstop to State Performance Assurance Plans.

The most basic issues in this proceeding concern the effect of any federal performance standards program on existing and future state plans, enforcement of the standards and the types of carriers to be covered by the federal program. Unsurprisingly, many ILECs want to eliminate existing state programs and have competitive local exchange carriers ("CLECs") comply unnecessarily with federal reporting requirements. The Commission should dismiss these ILEC efforts to further retard competition.

First, the Commission's own adoption of performance standards should not disrupt existing state programs. As described in the initial comments of Cox and many other parties, state commissions have expended great effort to design and implement performance standard

² These reply comments do not address issues that were fully addressed in Cox's initial comments. To that extent, those initial comments are incorporated hereby by reference.

programs that address state-specific needs and conditions.³ These tailored programs maximize the benefits to consumers by emphasizing the issues that matter most in those states.

Moreover, many state programs are in place and operating today, and disruption of those programs would eliminate any hard-won progress in measuring and reporting ILEC performance that has occurred to date. In fact, any Commission-adopted program is likely to be subject to ILEC appeals, and experience since the 1996 Act demonstrates that such appeals can add years to the implementation time of Commission rules.⁴

In this context, the correct Commission policy is the one described in Cox's initial comments and the comments of the California and Oklahoma commissions.⁵ That policy is to adopt federal standards as a backstop to state standards. If a state does not choose to adopt or enforce its own standards, or if a state has not yet completed work in this area, then the existence of federal standards will ensure that an ILEC's behavior is not unchecked. If a state, based on local conditions, adopts standards that are more stringent than the federal standards or that cover elements of ILEC performance that are not addressed at the federal level, the state standards should not be supplanted, but should remain in place. Further, the Commission need not engage in any detailed analysis of whether specific state standards are more or less stringent than the federal standards, and should leave such determinations to the state commissions.

³ Comments of Cox Communications, Inc. ("Cox Comments") at 6; Comments of the Oklahoma Corporation Commission ("Oklahoma Comments") at 3. Indeed, several ILECs acknowledge the benefits of state-specific standards. *See, e.g.*, Comments of BellSouth Corporation at 8.

⁴ The ILEC comments make clear that they will, for instance, challenge any enforcement mechanisms adopted by the Commission. *See, e.g.*, Comments of SBC Communications ("SBC Comments") at 35-42; Comments of the Verizon Telephone Companies ("Verizon Comments") at 40-47. As shown below, such challenges will be baseless, but they still could delay effective implementation of federal performance standards.

⁵ Cox Comments at 3-4; Comments of the People of the State of California and the California Public Utilities Commission at 4; Oklahoma Comments at 3.

The ILECs argue that permitting state and federal standards to co-exist is overly burdensome and unnecessary.⁶ They are doubly incorrect. First, the co-existence of federal and state standards avoids the likelihood that ILEC performance will devolve to the lowest common denominator. This is a significant concern, because ILECs have little incentive to do anything more than the minimum mandated by the relevant regulatory authorities. Dual standards also will balance the value of having minimum requirements that competitors can rely upon across the nation with the benefits of recognizing state-specific needs. Neither a fully federalized regime nor the current state-only regime can achieve this balance.

Similarly, the co-existence of federal and state standards will not result in any meaningfully increased burden on ILECs. Many of the measurements that would be required under a federal regime are being performed already, and reporting those measurements to the Commission and a state regulator would not add meaningfully to ILEC expense. In addition, to the extent one set of standards is more stringent than another, compliance with the more stringent standard will result in compliance with the lesser standard as well, so the burden of compliance should not be significant. In any event, despite ILEC complaints about the costs of complying with reporting requirements, their own comments establish that the burden is not significant. Even the greatest amount cited in the ILEC comments constitutes a small fraction of ILEC revenue.⁷

Some ILECs embellish their arguments by claiming that the Commission lacks the authority to enforce any standards it adopts.⁸ This claim also is wrong. There is no question that

⁶ See, e.g., SBC Comments at 3-11.

⁷ While it is possible that compliance with reporting requirements might be more burdensome for small and rural ILECs, Cox agrees with the majority of commenters that ILECs subject to exemptions or suspensions under Section 251(f) should not be required to comply with any performance requirements adopted by the Commission. Cox Comments at 9, n.4.

⁸ See, e.g., SBC Comments at 35-42; Verizon Comments at 40-47.

the Commission can impose forfeitures for any violations of performance standards or reporting requirements embodied in its rules, and there is little reason for elaborate procedures such as those suggested by some ILECs.⁹ Similarly, the ILEC arguments that the Commission cannot impose automatic penalties to be paid to CLECs ignores the Commission's power to determine whether rates and other terms and conditions are just and reasonable under Sections 201 and 251(c).¹⁰ The Commission need do no more than conclude that it is not just and reasonable for an ILEC to charge standard rates for below-par performance and adopt appropriate compensation for such performance, just as it determined that lower-quality access service should be subject to substantially lower charges in the pre-equal access era.¹¹ In addition, CLECs should be permitted to base complaints on violations of performance standards. Indeed, violations of Commission rules always can form the basis for complaints under the Communications Act, and there is no exception to this principle for violations of rules implementing Section 251.¹²

Finally, the Commission should rebuff ILEC efforts to impose performance or reporting requirements on CLECs.¹³ In most cases, the ILECs can articulate no reason to place these requirements on CLECs except an inchoate desire for "regulatory parity." Regulatory parity, however, is appropriate only when two types of carriers are similarly situated. That is not the case here. CLECs lack market power and, therefore, the ability to engage in harmful

⁹ Contrary to ILEC arguments, there is nothing wrong with automatic issuance of a notice of apparent liability ("NAL") if an ILEC does not meet a specified standard. The ILEC has no inherent right to explain its failure prior to the issuance of an NAL so long as it is a Commission licensee. Compare 47 U.S.C. § 503(b)(4) (no notice prior to NAL for Commission licensees) with 47 U.S.C. § 503(b)(5) (notice prior to NAL for non-licensees). As all ILECs have FCC authorizations, no notice is required. Similarly, if the Commission determines that only limited exceptions to its performance standards will be permitted, an ILEC will have no right to raise other arguments in opposition to an NAL.

¹⁰ 47 U.S.C. §§ 201, 251(c).

¹¹ See, e.g., MTS and WATS Market Structure, *Memorandum Opinion and Order*, 97 FCC 2d 834, 854-55 (1984) (imposing discounts on non-premium access services).

¹² 47 U.S.C. §§ 208(a), 209.

¹³ See, e.g., SBC Comments at 29; Verizon Comments at 68.

anticompetitive behavior against ILECs. In practice, customers blame any problem on the CLEC, not the ILEC, so CLECs are held to a higher standard in the marketplace than ILECs. In some cases, such as trunk provisioning, the asymmetry is particularly obvious because both ILEC and CLEC customers will blame the CLEC, not the ILEC, if they cannot make calls to or receive calls from CLEC customers. In other cases, such as collocation and receipt of firm order commitments, CLECs do not even provide the services that would be measured by the standards. Thus, it truly would be unnecessarily burdensome to require CLECs to comply with performance standards or report to the Commission on their performance.

II. The Commission Should Develop Performance Standards Based on the Record in This Proceeding.

Several commenters suggest that the Commission should sponsor workshops to develop the standards to be adopted in this proceeding.¹⁴ Workshops are entirely unnecessary and only would lead to harmful delays in the implementation of workable standards.

First, workshops are unnecessary because there already is sufficient information on which to base the Commission's standards. As noted above, state commissions around the country have spent years developing their own standards, often through elaborate workshops and notice and comment proceedings. The Commission should not turn its back on this work. Rather, it should use the extensive data collected by the states, along with the comments of the CLECs that are affected by ILEC performance, to craft national standards. At best, new federal workshops would duplicate the state efforts, while imposing unnecessary costs on CLECs and ILECs

¹⁴ See, e.g., SBC Comments at 45.

alike.¹⁵ At worst, national workshops would result in no recommendations at all, leaving the Commission to make the decisions it could make today.

Further, workshops would lead to dangerous delays in implementing the Commission's performance standards program. As a practical matter, workshops would take months to complete, assuming that they succeeded, and the Commission might still have to seek comment on the workshop results, which would cause further delay. If the workshops did not succeed, which is a substantial possibility given the diversity of the parties and the stakes involved, then the delays would be even more significant. Meanwhile, the absence of operational standards would allow ILECs to continue to disadvantage CLECs in the marketplace by performing at subpar levels. Given the delicate state of local competition, any delay creates a substantial risk to both competitors and consumers. Thus, the Commission should not require workshops to develop standards and should, instead, use the record of this proceeding to determine the nature of the standards to be met by ILECs.

III. The Commission Should Adopt an Appropriate Schedule for Review of the Standards It Adopts in This Proceeding.

One of the more remarkable arguments made by the ILECs in this proceeding is that any standards adopted in this proceeding should sunset automatically, without any review.¹⁶ These ILECs appear to presume without evidence that two or three years of standards will be enough to ensure robust competition. A more prudent approach would be to avoid arbitrary sunset provisions and, instead, to commit the Commission to periodic reviews of its standards to determine whether they should be retained, modified or augmented.

¹⁵ As noted in Cox's comments, many smaller CLECs could not afford to participate in national workshops. Thus, it is likely that the results of any workshops would not recognize the needs of smaller carriers.

¹⁶ See, e.g., SBC Comments at 66.

The dangers of an automatic sunset are obvious. A sunset gives the ILECs a known end point, after which they will not be subject to any federal standards. This gives them ample incentives to game the system in many ways, including delaying the effectiveness of performance standards through appeals. Equally important, a sunset does not provide any assurance that problems identified by the standards will be corrected before the rules no longer are in place. Indeed, there is little reason for an ILEC to correct a problem that it identifies in the last few months before sunset, because there will be relatively little benefit to doing so.

These flaws are magnified when the sunset period is short, such as the two or three year periods proposed by the ILECs. Two or three years is a very short time compared to how long it will take local competition to develop fully. An ILEC could conclude, in fact, that it was worthwhile to bear the costs of forfeitures or other penalties for such a period, especially if it believed there was an opportunity to delay or avoid penalties through loopholes in the rules.

Rather than adopting a sunset date, the Commission should follow the practice it adopted in its *UNE Remand Order* and institute periodic reviews of the standards created in this proceeding.¹⁷ Periodic reviews will give ILECs the opportunity to demonstrate that specific standards, or the entire regime, are unnecessary. Conversely, reviews will give CLECs the opportunity to show that new or modified standards are necessary in light of marketplace developments.¹⁸ Periodic reviews also will permit the Commission to judge the public interest in light of then-existing conditions, rather than attempting to project the state of a marketplace two or three years into the future. As experience shows, projecting the future of local telephone service markets is particularly difficult and any projections are likely to be wrong.

¹⁷ Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services, *Notice of Proposed Rulemaking*, CC Docket No. 01-337 (rel. Dec. 20, 2001).

¹⁸ For instance, if the Commission had adopted performance standards in 1996, there would have been no need for standards specific to DSL, while such standards may be appropriate today.

Consequently, the Commission should adopt a regime of periodic reviews and should avoid a rigid sunset provision.

IV. Specific Performance Standards

A. The Commission Should Adopt Standards that Address the Needs of Facilities-Based Providers.

As described in Cox's initial comments, the Commission's focus in this proceeding should be on adopting performance standards that ensure a level playing field for facilities-based providers such as Cox.¹⁹ For that reason, and because Cox has little experience in issues affecting resellers and UNE platform providers, Cox's comments have addressed only standards for services and functionalities that are important to facilities-based providers. Cox does not oppose the adoption of standards that will affect resellers and UNE platform providers, but believes those issues are better addressed by other parties.

In that context, Cox has reviewed the performance metrics proposal submitted in this proceeding by WorldCom.²⁰ In many respects, the WorldCom proposal tracks the concerns described in Cox's initial comments, and Cox supports the proposal where it does so. The following is a discussion of certain specific standards included in the WorldCom proposal and the reasons Cox believes they should be adopted. Based on its review of the WorldCom proposal and other parties' filings, Cox would further propose an additional performance metric that captures the percent of timely updates to ILEC systems not addressed by other metrics, such as the timeliness of updates to ILEC E-911 databases.

¹⁹ Cox Comments at 2.

²⁰ Comments of WorldCom, Inc. ("WorldCom Comments") at 32-59.

Percent Jeopardy Notices

As WorldCom explains, “CLECs need to know as soon as the ILEC is aware that a due date is going to be missed.”²¹ While Cox’s initial comments focused on how often CLECs receive notice that a date will be missed, WorldCom’s proposed metric addresses the other dimension of this issue, which is that prompt notification of jeopardy is necessary so that the CLEC can tell its customer, arrange for alternative service, escalate to a higher level within the ILEC or take any other action it deems appropriate. Both measures are important to a CLEC’s ability to serve its customers and should be included in the Commission’s final performance standards.

Percent On-Time Completion Notices

As described in Cox’s initial comments, completion notices are a key element of the customer’s transition from the ILEC to the CLEC.²² Therefore, such notices should be provided promptly to ensure that, among other things, service begins as soon as possible and the CLEC knows that the ILEC has ceased billing for that service. WorldCom has proposed that provisioning completion notices be provided within six hours and that billing completion notices be provided within 24 hours.²³ These intervals provide a reasonable level of timeliness for CLECs and ILECs should be able to meet them without any difficulty.

Percent Trunk Blocking

Cox supports WorldCom’s proposed metric for percent trunk blocking.²⁴ This is a significant issue for Cox because Cox often experiences blocking over trunks carrying traffic

²¹ *Id.* at 34.

²² Cox Comments at 9-11.

²³ WorldCom Comments at 46.

²⁴ *Id.* at 55.

from the ILEC to Cox. For instance, in Virginia, Cox customers have had their incoming calls blocked repeatedly when Verizon has failed to augment its trunk capacity, even though Cox expends significant resources to prepare forecasts of Verizon-to-Cox traffic.

Cox also has experienced blocking when ILECs do not provision enough capacity between their tandems and end office switches or between their access tandems and interexchange carrier points of presence. For instance, last September, Cox opened a trouble ticket for Verizon in Virginia because long distance calls from Cox customers who were presubscribed to Sprint were being blocked, even though Cox was not blocking on its trunks to Verizon. It was over a month before Verizon fixed this problem, and Cox had to escalate the issue twice before it was addressed.

Cox had the same experience in November, this time with calls made by customers who were presubscribed to WorldCom. Additionally, customers' calls to an MCI-owned toll free number resulted in a fast busy. At first, Verizon would not address the issue and suggested that Cox bring it to MCI. Verizon agreed to investigate only after escalation. Even then, Verizon took no action until Cox explained to Verizon's managers that Cox did not have direct trunks to MCI and that the trunks in question were between Verizon and MCI. This incident also took over a month to resolve.

In each of these cases, Cox's customers complain to Cox, not the ILEC, and Cox's reputation is damaged. Performance standards for trunk blocking will increase the incentives for ILECs to provision sufficient trunks to carry all of their CLEC-related traffic.

Percent Timely Collocation Responses

WorldCom proposes specific measures for the timeliness of ILEC responses to collocation requests.²⁵ Cox agrees that these measures should be adopted. Cox has experienced delays in collocation implementation on many occasions – delays that would have been unnecessary if the ILEC had treated Cox as a co-carrier, rather than as a customer. Absent co-carrier treatment, imposed timelines for reporting at least create some certainty in the collocation process.

As described in Cox's comments, the timing of collocation is central to CLEC business plans, since service cannot begin until collocation is in place.²⁶ The ILEC's response to a collocation request is an important part of that process. Until the CLEC receives the response, it does not know if space is available or whether collocation is economically feasible. Consequently, the timeliness of the ILEC's response is a gating factor for collocation and, ultimately, CLEC entry into the affected geographic market.

Percent Collocation Augment Appointments Met and Average Collocation/Augment Interval

These measures address the extent to which an ILEC performs its collocation obligations in a timely fashion. Augment appointments and augment intervals are critical to CLEC service expansion, and thus are nearly as significant as initial collocation measures. For these reasons, Cox supports WorldCom's proposed measures.²⁷

²⁵ *Id.* at 56-57.

²⁶ Cox Comments at 14-15.

²⁷ WorldCom Comments at 56-57.

NXXs/LRNs Loaded Before LERG Effective Date

WorldCom proposes a standard of 100 percent for ILEC loading of NXXs and location routing numbers (“LRNs”) before the effective date in the LERG for these resources.²⁸ Cox fully supports this standard. Unless NXX codes and LRNs are loaded before they go into service, CLEC customers cannot receive calls from ILEC customers. There is no workaround or alternative to ILEC completion of these processes. Thus, it is critical that every NXX and LRN be loaded in a timely fashion.

Unfortunately, ILECs sometimes do not consider loading CLEC NXXs to be a priority. For instance, Cox recently discovered that BellSouth had failed to load an NXX for at least a year after it was launched. This error was discovered only when Cox stopped entering data manually as it began offering service to residential customers and BellSouth refused to accept directory listings on the ground that the NXX was not activated. Only after Cox showed that it had been in the LERG for a full year did BellSouth agree to accept new directory listings. Cox has had similar, though less extreme, experiences with other carriers, including Verizon. In each case, Cox and its customers have been subject to service disruption. These episodes demonstrate the significance of this performance measure.

Percentage ILEC System Updates and Changes Released On Time

Cox proposes this new performance metric in light of its review of the comments, and particularly WorldCom’s proposed NXXs/LRNs Loaded Before LERG Effective date performance metric. Cox agrees that the ILECs need to be held accountable for the timeliness and implementation of system changes. Loading of numbering resources is only a part of this process. The process also includes unlocking E911 records, and upgrades, including software

²⁸ *Id.* at 57-58.

changes to their billing system, that affect other carriers. The Commission should adopt an appropriate metric for such changes.

System change problems occur in a variety of contexts. For instance, as described in Cox's initial comments, ILECs in some cases do not consistently unlock E911 records when a former ILEC customer ports to a CLEC.²⁹ Although the ILECs have advised Cox that there is no impact to the end-user, failure to unlock these records means that the ILEC has not relinquished control over its former customers. Consequently, ILECs should be accountable for performing this function on a timely basis.

Timeliness of software modifications also is a significant issue. For example, last summer, Verizon advised Cox that it would be unable to address a LNP flow through problem in Virginia until the next software upgrade in two weeks. The flow through problem stemmed from Verizon's unannounced and seemingly untested change to its billing software, which prevented Cox's LNP orders from flowing through to the Service Order Administrator, an industry database used for purposes of porting telephone numbers between providers. To remedy the situation, Cox had to submit its order twice – through the usual business process (web GUI) and so via hand-compiled daily lists so that Verizon could then manually process these orders. Verizon failed to devote enough resources to processing the manually compiled orders, so Verizon asked Cox to submit two manually compiled lists in addition to the web GUI's initial order. To resolve this situation, Cox ultimately had to file a complaint with the Virginia State Corporation Commission. In the meantime, the industry had to endure three weeks of confusion. Thus, a performance metric that measures the timeliness of ILEC updates and changes is

²⁹ Cox Comments at 14.

necessary to give ILECs incentives to prevent and capture system problems before they become unmanageable.

B. Where Possible and Appropriate, the Commission Should Adopt Specific Performance Requirements Rather Than Depending on Measures of “Parity” with Retail Services.

The ILECs almost uniformly propose that any standards the Commission adopts should, whenever possible, be focused on achieving “parity” with provision of similar services by the ILEC to itself.³⁰ The Commission should not limit itself to parity measures, which are inherently flawed. Rather, where appropriate, it should adopt standards that set actual minimum expectations for ILEC performance.

For example, parity is not an adequate standard for interconnection trunk blocking. The trunk blocking metric measures blocking on final trunks. ILECs, because of their size and number of customers, have only a small percentage of their traffic travelling over final trunks; while CLECs, at least initially, have a very large percentage of their traffic on common or “final” trunks. The result is that even with “parity” with interconnection trunks, the experience of the CLEC customers may be substantially worse than that of ILEC customers.

Despite ILEC claims to the contrary, the Commission has ample authority to adopt absolute standards. The ILECs argue that the Commission’s authority is limited by the “at least equal in quality” language in Section 251(c), but that is incorrect. That language applies only to interconnection, and does not apply to collocation or unbundled elements.³¹ Second, each substantive provision of Section 251(c), including the interconnection provision, requires the element or functionality to be provided on terms that are “just, reasonable and

³⁰ See, e.g., Verizon Comments at 59-60.

³¹ Compare 47 U.S.C. § 251(c)(2) (interconnection) with 47 U.S.C. § 251(c)(3), (5) (unbundled elements and collocation).

nondiscriminatory.”³² Third, even to the extent that the “equal in quality” language does create a limitation, it would be reasonable for the Commission to read that limitation to apply only to the quality of interconnection as provided, not to the process of provisioning interconnection (including the ordering process) or to the quantity of interconnection (*e.g.*, trunk blocking). Finally, regardless of the language of Section 251(c), the Commission retains its authority under Sections 201 and 202, which contain no provisions that would limit the adoption of absolute performance standards.³³

The Commission should exercise its power to adopt standards, whenever possible, that fix minimum levels of expected ILEC performance. Although in some cases a parity measure will accomplish this (for example, when the CLEC and the ILEC are using the same systems in the same ways), fixed minimum standards create certainty for all parties – ILECs, CLECs and the Commission – because they will know when a bright line is crossed. Standards based on parity, on the other hand, could require complex calculations to determine when a particular measure is sufficiently out of parity for sanctions to be imposed or corrective action to be required.³⁴

Parity-based standards are more complex for another reason as well: There are few true analogues to the functionalities ILECs provide to CLECs. In general, retail analogues are flawed because they compare the time it takes an ILEC to provide a whole, finished service to its retail customers to the time it takes the ILEC to provide one portion of that service to a CLEC. For instance, once a UNE loop is provisioned, a CLEC needs to activate the customer in its own

³² 47 U.S.C. § 251(c)(2), (3), (5).

³³ 47 U.S.C. §§ 201 (duty to serve on just and reasonable terms), 202 (prohibition on unreasonable discrimination).

³⁴ Several ILECs filed comments that included elaborate discussions of appropriate statistical tests, even proposing different tests for different types of performance measurements. *See* SBC Comments at 32-35; Verizon Comments at 73-77. Such tests are entirely unnecessary if the Commission adopts bright line numeric standards.

switch, ensure that various database entries are made accurately and initiate billing, among many other activities, before the customer can receive service. If UNE loop provisioning simply is compared to the ILEC's provision of new service to a retail customer, provisioning at "parity" actually will result in a significant disadvantage to the CLEC. Moreover, the necessary adjustments to create a true "parity" measurement are likely to be complex and subject to dispute. For that reason, direct measures of performance, such as the percentage of loops provisioned within a certain number of days, are simpler and likely to be more effective.

Indeed, there are many functionalities for which it would be impossible to create a parity-based measure that made any sense. ILECs do not perform any retail or self-provisioning function analogous to collocation, for instance, so there is nothing to measure parity against. While in some cases the Commission might be able to jury-rig an analogous measure to the functionality used by the CLEC, there is no reason to do so when direct, specific standards can be adopted instead.

V. Conclusion

For all these reasons, Cox Communications, Inc. respectfully requests that the Commission adopt rules consistent with Cox's comments and these reply comments.

Respectfully submitted,

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February 12, 2002

CERTIFICATE OF SERVICE

I, Vicki Lynne Lyttle, a secretary at Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 12th day of February, 2002, copies of the foregoing "Reply Comments of Cox Communications, Inc." were served, via first-class mail, postage prepaid, on the following:

The Honorable Michael Powell
Chairman
Federal Communications Commission
445 - 12th Street, SW, Room 8-B201
Washington, DC 20554

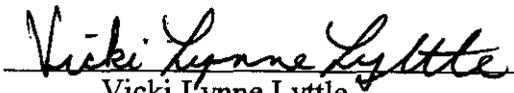
The Honorable Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

The Honorable Michael Copps
Commissioner
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

The Honorable Kevin J. Martin
Commissioner
Federal Communications Commission
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Janice Myles
Policy & Program Planning Division
Common Carrier Bureau
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