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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, DC 20554

Re: *In the Matter of Performance Measurements and Standards for Interstate  
Special Access Services, CC Docket No. 01-321.*

Dear Mr. Caton:

Cablevision Lightpath, Inc. ("Lightpath"), by its counsel, respectfully submits this letter in lieu of Reply Comments in response to the Federal Communications Commission's ("Commission's") Notice of Proposed Rulemaking<sup>1</sup> on performance measurements and standards for interstate special access services. The initial comments overwhelmingly support the need for standards and meaningful financial remedies to improve incumbent local exchange carrier ("incumbent LEC") performance on special access.<sup>2</sup> Lightpath, therefore, respectfully requests the adoption of rules consistent with the *Joint Competitive Industry Group Proposal*.<sup>3</sup>

<sup>1</sup> *Performance Measurements and Standards for Interstate Special Access Service, et al.*, CC Docket No. 01-321, Notice of Proposed Rulemaking (rel. Nov. 19, 2001) ("Special Access NPRM").

<sup>2</sup> ASCENT at 7-8; ALTS at 3, 5-8, 10-12; AT&T Wireless at 7-8, 15-16; Cable & Wireless at 15-16; DIRECTV at 13-14; MPower at 7-12; Minnesota Department of Commerce at 2, 5, 15; Sprint at 14-15; Time Warner and XO Communications at 2, 4-5, 7-11, 15-16; WorldCom at 5, 9-10, 37, 47-49.

<sup>3</sup> Letter from the Joint Competitive Industry Group to the Honorable Michael K. Powell, Chairman, Federal Communications Commission, regarding the Joint Competitive Industry Group Proposal Regarding Performance Metrics and Installation Intervals for Interstate Special Access Services, *Performance Measurements and Standards for Interstate Special Access Services, CC Docket No. 01-321* (filed Jan. 22, 2002); Letter of the Joint Competitive Industry Group Regarding Elements of a Special Access Provisioning Enforcement Plan, *Performance Measurements and Standards for Interstate Special Access Service, et al.*, CC Docket No. 01-321 (filed Feb. 12, 2002) (collectively the *Joint Competitive Industry Group Proposal*).

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Contrary to the claims of incumbent LECs, the special access market is not sufficiently robust to ensure quality provisioning of special access circuits to competitive providers. If it were, facilities-based competitors like Lightpath would have long foregone the disruptive and costly market consequences of purchasing incumbent LEC facilities.<sup>4</sup> Indeed, the evidence in this proceeding on Verizon's performance, in particular, confirms that incumbent LEC provisioning of special access is well below the type of service a company would provide (and indeed could get away with providing) to its customers in a truly competitive market.<sup>5</sup> Unfortunately, Lightpath has experienced these failures repeatedly and consistently for years, despite its efforts to work with Verizon on remedying these concerns.<sup>6</sup>

As Lightpath and others have demonstrated, there are real and significant problems in the special access provisioning by incumbent LECs.<sup>7</sup> Failures consistently occur in each stage of the access process. There are performance breakdowns in pre-ordering and ordering. Incumbent LECs have not implemented the appropriate mechanisms to ensure that competitive providers have certainty about the availability and condition of circuits and when those circuits will be delivered.<sup>8</sup> The provisioning process is fraught by repeated, substantial and crippling installation delays.<sup>9</sup> As shown by Lightpath's own experience, the performance data demonstrates that Verizon, in particular, has missed installation deadlines by weeks, and in some cases, well over a month.<sup>10</sup> In addition to the data in its initial comments, Lightpath has determined the following: in April 2001 only 52% of special access orders were installed on time, and in May 2001, June 2001, August 2001 and November 2001, Verizon only installed 51% of Lightpath's circuit orders on time. In July and October of 2001, the on-time installation percentage was at 49% and in December of 2001, the on-time installation percentage was just 48%. Also, contrary to Verizon's claims,<sup>11</sup> there is evidence of inferior maintenance and repair service. As Lightpath has indicated, Verizon has regularly failed to provide timely maintenance and repair on circuits sold to Lightpath and these failures have threatened Lightpath's reputation and competitive viability.<sup>12</sup> Finally, while the above-described data provides a snapshot of Verizon's

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<sup>4</sup> Lightpath notes that, while incumbent LECs continue to tout the competitiveness of the special access and local markets, competitors and most recently, Global Crossing, have been falling prey one-by-one to market uncertainty and bankruptcy. *See, e.g. 5 Years and \$15 Billion Later, A Fiber Optic Venture Fails*, New York Times, Section A, Page 1 (Jan. 29, 2002);

<sup>5</sup> Lightpath Comments at 2-4.

<sup>6</sup> Lightpath at 3-4.

<sup>7</sup> ALTS at 3; Cable & Wireless at 7-8; Lightpath at 2-4; WorldCom at 12-18.

<sup>8</sup> Lightpath Comments at 2; WorldCom at 14-15.

<sup>9</sup> Lightpath at 3; WorldCom at 16-17.

<sup>10</sup> Lightpath Comments at 3.

<sup>11</sup> Verizon Comments at 14 n.31

<sup>12</sup> Lightpath Comments at 4.

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performance, this data reflects the type of poor performance that Lightpath has experienced from early 2000 and that continues presently. More than a year of poor performance can hardly be dismissed as "anomalous."<sup>13</sup>

Adopting performance standards will address poor performance in the special access market. In addition, these standards will benefit the local services market. It is widely known by incumbents and competitors alike that the current regulatory regime requires competitors to rely substantially on special access circuits to provide local services.<sup>14</sup> Thus, improving special access performance could have a far reaching pro-competitive effect on the local services market.

Based on a long history of poor performance, commenters have widely recognized that effective remedies are necessary to implement standards, and hence, are a key component of any performance plan. For this reason, Lightpath supports the *Joint Competitive Industry Group Proposal* and recommendation that the Commission adopt meaningful, escalating, CLEC-specific remedies. It is critical that financial remedies be established that are sufficiently potent to deter poor performance. As the Minnesota Department of Commerce recognized, penalties must not become just the cost of doing business.<sup>15</sup> Toward that end, penalties should be incident-based, and should increase with the severity and frequency of the performance failure. These financial remedies should also be in addition to any remedies traditionally attainable through contractual provisions and complaint processes.

Poor special access provisioning is more than just violation of competitive policy principles, but has a real market effect on competitors' ability to attract and retain customers and to continue as viable market participants. Thus, incumbent LECs should not be permitted to withhold remedies to competitive LECs that are injured by incumbent LEC violations. While U.S Treasury payments affect the incumbent LECs' bottom line, they do not sufficiently expose incumbent LECs to the threat that their intransigence will be remedied by direct support for those most disadvantaged by incumbent LEC violations, thereby, preventing the LEC from profiting in the marketplace from its bad acts. Incumbent LECs that provision inferior special access service should be required to compensate competitive providers directly for the competitive harm inflicted upon them and face the real consequence that these penalty sums will be used by providers to restore their competitive position against the incumbent LECs.

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<sup>13</sup> Verizon Comments at 10 n.22.

<sup>14</sup> Focal Point and PacWest at 12; Paetec at 3; Time Warner and XO Communications at 3, 12-13; VoiceStream at 4-5; WorldCom at 21-25.

<sup>15</sup> Comments of the Minnesota Department of Commerce at 5.

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For these reasons, Lightpath respectfully urges the adoption of performance standards that will ensure competitors place in the special access and local markets. Moreover, to ensure the effectiveness of these standards, Lightpath requests that the Commission adopt meaningful financial remedies consistent with the *Joint Competitive Industry Group Proposal*.

Respectfully Submitted,

CABLEVISION LIGHTPATH, INC.



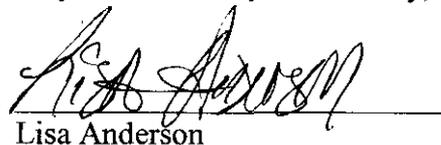
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## CERTIFICATE OF SERVICE

I, Lisa Anderson, do hereby certify that copies of the foregoing Comments of Cablevision Lightpath, Inc. were served on the following via First Class Mail or Hand Delivery\* this 12th day of February, 2002.



Lisa Anderson

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