September 26, 2002

By Electronic Delivery

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

In previous *ex parte* filings submitted to the Federal Communications Commission ("Commission"), the Joint Competitive Industry Group ("JCIG") has proposed a series of measurements, standards, reporting obligations, and enforcement mechanisms that would enhance the Commission's ability to govern the provision of special access services by incumbent local exchange carriers ("LECs"). Subsequent to these submissions, the Bell Operating Companies ("BOCs") submitted *ex parte* filings in which they claimed that JCIG's proposals lacked evidentiary support and were legally flawed. In addition, on August 26, 2002, BellSouth and Time Warner Telecom ("TWTC") submitted to the Commission a joint proposal specifying certain performance measurements and standards that would apply to the ordering, provisioning, maintenance, and repair of special access service.

As explained below, the performance measurements proposed by BellSouth are largely consistent with JCIG's proposed measurements, providing conclusive proof that many of JCIG's proposed measurements are generally acceptable to at least one Tier 1 LEC. As further explained below, it is clear that JCIG's proposals – including its proposed measurements, standards, reporting requirements and remedies – are supported by ample record evidence and are fully consistent with the Act and the Commission's rules and policies.

This *ex parte* submission addresses each of the BOCs' arguments and provides additional support for JCIG's positions. The document is organized as follows:

- Section I addresses measurements, and includes JCIG's response to the measurements proposed by BellSouth and TWTC;

- Section II explains that standards must be reasonable and attainable but also provide customers with the performance they require;
- Section III discusses the need for reporting by Tier 1 incumbent LECs;
- Section IV addresses BOC arguments regarding JCIG's proposed enforcement mechanisms;
- Section V discusses the costs business customers incur as a result of the incumbent LECs' poor performance; and
- Attachment A provides a detailed explanation of JCIG's proposed performance standards.

I. JCIG's Measurements

The concerns raised by the BOCs about JCIG's proposed measurements are without merit. In fact, the vast majority of JCIG's measurements, including calculation methodologies, business rules, and exclusions, were expressly incorporated into the BellSouth/TWTC proposal.[1] The fact that one Tier 1 LEC has already accepted the vast majority of JCIG's measurements and business rules strongly indicates that there is no obstacle or sound rationale that would prevent the other incumbent LECs from doing so.

Moreover, several of the BellSouth/TWTC changes to the measurements that deviate from the JCIG proposal do so in ways that JCIG does not find objectionable. For these non-problematic changes to the JCIG measurements, which are summarized below, JCIG is willing to amend its original proposal to accept the measurements proposed by BellSouth:

Changes Proposed by
BellSouth/TWTC that Are Acceptable to JCIG

General

- Define FOC as a response to a "clean" ASR. (JCIG original: ASR.)
- Base calculation of FOC Receipt-Distribution on ASR receive date. (JCIG original: ASR sent date.)
- Base all calculations on expected FOC confirm interval.[2] (JCIG original: FOC receipt interval.)

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[1] Throughout this letter, JCIG uses the term "measurements" to refer to the following items: reporting dimensions, description, calculation methodology, business rules, exclusions, levels of disaggregation, and stated intervals.

[2] For this item, the BellSouth proposal is acceptable to JCIG, provided that the "FOC confirm interval" is defined to have the same meaning as the "FOC receipt interval."

SA-9 Failure Rate

- Change Levels of Disaggregation to: DS0, DS1, and DS3 & above. (JCIG original: DS0 + DS1; DS3 + OCn). *JCIG has no objection to disaggregating DS0 and DS1, but suggests that if this change is accepted, that DS3 and OCn also be disaggregated. The result would be that the same level of disaggregation exists for all measurements.*

SA-10 Mean Time to Restore

- Change Levels of Disaggregation to: DS0, DS1, DS3 & above. (JCIG original: DS0 + DS1; DS3 + OCn). [See note in SA-9.]
- Omit diagnostic regarding % Out of Service Greater than 24 hrs. (JCIG original: Include diagnostic regarding % Out of Service Greater than 24 hrs.)

SA-11 Repeat Trouble Rate

- Change Levels of Disaggregation to: DS0, DS1, DS3 & above. (JCIG original: DS0 + DS1; DS3 + OCn). [See note in SA-9.]
- Exclude informational tickets. (JCIG original: Informational tickets are already covered by the JCIG exclusion: "ILEC trouble reports associated with administrative tickets.")

For the remaining measurements where there is a disagreement between JCIG and BellSouth, JCIG believes there are compelling reasons for the Commission to adopt the measurement proposed by JCIG. These reasons are summarized in the following chart:

Changes Proposed by BellSouth/TWTC that Are Problematic

Item	JCIG Proposal	BellSouth/TWTC Proposal	Reason FCC Should Accept JCIG Proposal
General			
Levels of Disaggregation	For measurements SA-1 through SA-8, OCn is disaggregated from DS3.	For measurements SA-1 through SA-8, OCn is aggregated with DS3 (TWTC can request raw data if needed for further breakout).	Aggregating DS3s with OCns can mask problems specific to the ordering and provisioning processes associated with DS3s experienced by competing carrier customers.
Reporting Dimensions	ILEC must provide standardized customer-specific reports as well as three types of standardized comparison reports: CLEC/IXC Carrier Aggregate, ILEC Affiliates Aggregate, and End User Aggregate.[3]	BellSouth must provide only TWTC-specific reports to TWTC.	Without standardized reporting that reveals both industry-wide aggregate performance and customer-specific performance, neither customers nor the FCC will be able to identify the instances in which an ILEC engages in unjust or unreasonable or unreasonably discriminatory activity.

[3] *See, e.g.*, letter to Chairman Michael K. Powell, FCC, from JCIG (Feb. 12, 2002) (discussing the need for reporting requirements "applicable to the provision of all interstate special access services by Tier1/Class A incumbent LECs, including those services provided to the incumbent LECs' interexchange affiliates and retail customers."). (Except where otherwise noted, all comments and *ex parte* submissions cited herein were filed in CC Docket No. 01-321.)

Item	JCIG Proposal	BellSouth/TWTC Proposal	Reason FCC Should Accept JCIG Proposal
SA-5 Days Late			
Business Rules	Projects included.	Projects excluded.	ILECs should be held responsible for meeting FOC Due Dates that they have provided (typically as the result of negotiations) for projects. BellSouth agreed to include projects for every other measurement; there is no reason to treat SA-5 differently.
	Does not require carrier customers to forecast facility requirements.	Includes rule requiring TWTC to "forecast facility requirements to MSA/CO level on a quarterly basis."	Forecasting requires carriers to provide their competitors (the ILECs) with competitively sensitive information. Moreover, in JCIG members' experience, even when carriers provide forecasting, ILECs still often claim a lack of facilities. This can provide an incentive for competing carrier customers to "overforecast," and the ILECs to complain about the overforecasts, rendering any such requirement meaningless. Inclusion of a forecasting requirement would, therefore, have no advantages with respect to measurement, and would have the disadvantage of requiring carriers to provide competitively sensitive information to competitors.

Item	JCIG Proposal	BellSouth/TWTC Proposal	Reason FCC Should Accept JCIG Proposal
SA-6 Average Intervals – Requested/Offered/Installation			
Exclusions	Includes CNRs.	Excludes CNRs (installation interval only).	CNRs should not be excluded because this measurement is designed to capture the overall provisioning process without exclusions, consistent with Business Rule # 5 for SA-6, which states: "The Average Installation Interval includes all completions."
SA-7 Past Due Circuits			
Business Rules	Does not require carrier customers to forecast facility requirements.	Requires TWTC "to forecast facility requirements to MSA/CO level on a quarterly basis."	See SA-5, above.
SA-8 New Installation Failure Rate			
Exclusions	Includes repeat trouble reports.	Excludes repeat trouble reports.	Excluding repeat trouble reports would mean that multiple failures or troubles on the same newly installed circuit would not be captured. If a new circuit fails multiple times in the first thirty days, customers will be dissatisfied. Therefore this situation should be reflected in this measurement. Moreover, there are many instances when carrier customers have to send another trouble ticket within 30 days to fix a newly installed circuit that the

Item	JCIG Proposal	BellSouth/TWTC Proposal	Reason FCC Should Accept JCIG Proposal
			ILEC claimed was fixed or on which a FOK/TOK or other code indicating working condition, was returned.
SA-11 Repeat Trouble Rate			
Business Rules		Include business rule: "TOK, FOK, and NTF not to exceed 10% of the total reports in any given rating period for total measured customer reports referenced in performance measures 8, 9, and 11 to be valid in any given month."	It is not clear what issue this added rule is seeking to address. No breakout of FOK/TOK was added, and even if it were added, this business rule would impose a standard on the ordering carrier without explanation or justification. A breakout for FOK/TOK is included in JCIG SA-10 (MTTR), and was retained in the BellSouth/TWTC proposal as a diagnostic. If an ILEC is concerned about the numbers of TOK, FOK, and NTF it returns for any carrier, it should request a root cause analysis to determine the reason(s).

As the foregoing discussion makes clear, there are only a handful of instances in which BellSouth has not already accepted measurements that are identical to or substantially in accord with JCIG's proposed measurements. The extent to which JCIG and BellSouth already agree strongly suggests that all Tier 1 LECs could readily track the vast majority of the measurements proposed by JCIG, and that such measurements do not – as Qwest, for instance, maintains – fail to "meet the needs of realism and the goals of the Commission."[4] To the contrary, BellSouth's acceptance of most measurements proves that they are eminently realistic and, at least in the eyes of one Tier 1 LEC, in accord with the goals of the Commission.

[4] Letter to Marlene H. Dortch, FCC, from John W. Kure, Qwest, Attachment at 1 (Aug. 8, 2002) ("*Qwest ex parte*").

II. JCIG's Standards

Some BOCs have claimed that the Commission lacks sufficient record basis for adopting performance standards for special access services. Any such concerns should be alleviated by the information provided in this letter, including Attachment A, which details the basis for each of the standards proposed by JCIG. Adoption of these standards is critical if the Commission is to fulfill its statutory duty to ensure the availability of adequate facilities at reasonable charges.[5]

There can be no doubt about the need for standards governing incumbent LEC provision of special access services. Incumbent LEC performance today is inadequate. Incumbent LECs frequently delay provisioning circuits, routinely miss due dates, and regularly contribute to circuit outages, many of which last too long. These problems impede customers' ability to use special access for local, long distance and advanced data services. As a result, the goals of the Communications Act are not being met. The Commission therefore should encourage incumbent LECs to improve their performance to a level that is both reasonable and attainable. The Commission should not allow the current level of unacceptable performance to continue. Nor should it allow those providers that are performing better than the others to backslide to the average.

The FCC can discern the level of performance that is reasonable and attainable in part by looking at what certain providers are able to achieve today. Where one incumbent LEC has demonstrated that it can sustain a high level of performance in an area, it provides powerful evidence that such a level of performance also is attainable by other incumbent LECs. The Commission often has used this so-called "best practices" approach to identify acceptable performance when benchmarking is necessary or desirable. For example, international settlement rates were set at benchmarks that reflected the "lowest, commercially viable, settlement rate paid by U.S. carriers to an overseas carrier from a competitive market."[6] The Commission also has used "best practices" as a guide in determining technical feasibility.[7] In addition, the conditions

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[5] *See* 47 U.S.C. § 151 (creating the Commission for the purpose of, among other things, making available "so far as possible, . . . a rapid, efficient, Nation-wide and world-wide wire and radio communications service with adequate facilities at reasonable charges.")

[6] *International Settlement Rates*, Report and Order, 12 FCC Rcd 19806, ¶ 133 (1997) (establishing a best practice rate); *see also Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling System, Request for Waiver by Verizon Wireless,* Order, 16 FCC Rcd 18364, ¶ 29 (2001) (discussing the Commission's decision to require that carriers use a "best practice" approach in providing automatic location information ("ALI") to callers who do not have ALI-capable handsets).

[7] *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, ¶ 45 (1999) (one incumbent LEC's deployment of a particular type of collocation established a rebuttable presumption that it is technically feasible for other incumbent LECs to provide the same collocation arrangement).

adopted in the SBC-Ameritech and Bell Atlantic-GTE merger proceedings further the public interest by spreading the best practices from one in-region state to all of the in-region states.[8] Best practices need not be the only guide the Commission follows to determine a reasonable standard, but they can assist in identifying sustainable performance in special access.

As demonstrated by the explanations provided in Attachment A to this letter, the special access service standards proposed by JCIG are reasonable and can be attained by Tier 1 incumbent LECs. The Commission therefore should adopt the proposed standards to facilitate both the Commission's and customers' ability to hold Tier 1 incumbent LECs accountable for their special access performance.

III. Need for Incumbent LEC Reporting

Contrary to the BOCs' assertions,[9] the current lack of reporting lies at the heart of the problems associated with incumbent LEC special access provisioning. The absence of incumbent LEC performance data – for carriers, end user customers and regulators – has made it extremely difficult for both retail and wholesale special access purchasers to demonstrate the actual levels of the incumbents' poor performance and to identify discrimination. That problem has been significantly exacerbated by the shroud of confidentiality the incumbent LECs have imposed over the modest amount of information that has been made available to some special access purchasers.

Accordingly, regular reporting of incumbent LEC special access performance data using standardized measurements is essential to prevent incumbent LECs from engaging in unjust or unreasonable practices or discrimination in violation of sections 201 and 202 of the Act.[10] First, reporting will reveal poor levels of performance for both retail and wholesale customers purchasing special access services from dominant incumbent LEC suppliers. Second, the availability of such data will reveal any variations in incumbent

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[8] *Ameritech Corp., Transferor and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 25, 63, 90, 95, and 101 of the Commission's Rules*, Memorandum Opinion and Order, 14 FCC Rcd 14712, ¶ 111 (1999) (discussing the need for benchmarking as a tool to evaluate a carrier's performance); *see also Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License,* Memorandum Opinion and Order, 15 FCC Rcd 14032, ¶¶ 279, 354 (2000).

[9] *See* Letter to Marlene H. Dortch, FCC, from Dee May, Verizon, Attachment at 1-4 (Aug. 16, 2002) ("*Verizon ex parte*"); *Qwest ex parte* at 1; Letter to Marlene H. Dortch, FCC, from SBC, Attachment A at 2 (Aug. 23, 2002) ("*SBC ex parte*").

[10] *See* 47 U.S.C. §§ 201(b), 202(a).

LEC performance across various performance measures and geographic regions, and expose discrimination among customers with regard to the same measures within the same areas.[11] Third, these data are necessary to enable special access purchasers to pursue enforcement remedies before the Commission and in other forums. And fourth, JCIG members believe that incumbent LECs will not have sufficient incentives to improve their special access performance unless their performance data are publicly available.

In addition to identifying and preventing violations of sections 201 and 202, the reporting requirements proposed by JCIG also will provide essential data to allow the Commission to evaluate BOCs' compliance with the nondiscrimination provisions of section 272.[12] The BOCs' incentive and ability to discriminate against their carrier customers increase as the BOCs obtain authority under section 271 to provide in-region interLATA telecommunications services. Accordingly, one of the key requirements imposed on BOCs after they have obtained section 271 authority is the obligation to provide in-region interLATA telecommunications services through a separate affiliate and not to discriminate between that affiliate and any other entity in the provision of services and facilities or in the establishment of standards.[13]

The special access reporting requirements proposed by JCIG would assist the Commission in enforcing the nondiscrimination requirements of section 272 in two ways. First, the data provided pursuant to JCIG's proposed reporting requirements would greatly assist the Commission in detecting violations of this nondiscrimination requirement in a timely manner while the BOC offers long distance service through a separate affiliate.[14] Second, the reported data also will likely prove extremely useful to

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[11] What little data is publicly available indicate that the BOCs have been discriminating in favor of their own affiliates. For example, a recent audit revealed that SBC routinely returned FOCs to its affiliates within one day, while taking more than five days to return FOCs to unaffiliated carrier-customers for the same types of orders. *See* SBC Communications Inc., Report of Independent Accountants on Applying Agreed-Upon Procedures, Performance Measure Differences, Attachment A-7, Objective VIII, Procedure 3 at 2 (Dec. 17, 2001; filed in CC Docket No. 96-150 by Ernst & Young on Sept. 16, 2002) ("*SBC 272 Audit Report*"). The same audit also showed that SBC restored outages more expeditiously for its affiliates than for non-affiliated customers. *Id.* at 3.

[12] *See, e.g.*, 47 U.S.C. § 272(e)(1).

[13] 47 U.S.C. § 272(c)(1). The Act provides that the separate affiliate requirement sunsets in a particular state three years after the date the BOC is authorized to provide in-region interLATA services in that state, unless the Commission extends the three-year period. 47 U.S.C. § 272(f)(1).

[14] Even if the separate affiliate requirement were lifted, the BOC would continue to have a statutory obligation to fulfill requests from unaffiliated entities for telephone exchange service and exchange access within a period no longer than the period in which it provides such telephone exchange service and exchange access to itself or its affiliates. 47 U.S.C. § 272(e)(1).

the Commission in its efforts to consider whether the nondiscrimination requirements of section 272 can be addressed by a set of safeguards (including, but not limited to, special access provisioning requirements) that might replace the separate affiliate requirement.[15]

Thus, it is essential that the Commission immediately adopt uniform reporting measurements and require incumbent LECs to begin reporting on those measurements as soon as possible.

In sharp contrast, there is no need to impose similar obligations on non-dominant access service providers as suggested by the BOCs.[16] The incumbent LECs' ability to perform poorly and discriminate in the provision of special access arises directly from their continued market power in special access services. Notably, the end-user customer members of JCIG have found that they are able to negotiate appropriate performance standards and remedies with non-dominant access providers. Moreover, there is no market-based reason to believe that non-dominant carriers could win business from end-user customers unless they offer performance levels that equal or exceed those of the incumbent LECs. Thus, imposition of performance standards and reporting requirements on the incumbents is sufficient to assure that other carriers' performance will be acceptable, and will equal or exceed that required by the performance standards.

IV. Enforcement Mechanisms

In an *ex parte* letter submitted to Chairman Powell on June 18, 2002, JCIG proposed three enforcement mechanisms that would enhance the Commission's ability to ensure that incumbent LECs provision special access services in a manner that complies with the Act: (1) service credits; (2) an expedited complaint process; and (3) a streamlined forfeiture process. On August 8 and August 16, respectively, Qwest and Verizon submitted *ex parte* filings in which they argued that all three proposals are legally defective. As explained below, Qwest's and Verizon's arguments are without merit.

A. Service Credits

Both Verizon and Qwest concede that section 205 of the Act[17] provides the Commission with the authority to order modifications to federal tariffs when a carrier's practices are or will be in violation of the provisions of the Act.[18] Verizon and Qwest argue, however, that this proceeding does not provide the evidence necessary to demonstrate that the incumbent LECs have violated the Act, and that the Commission

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[15] *See Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 9916 (2002).

[16] *See, e.g., Verizon ex parte*, Attachment at 4-5.

[17] 47 U.S.C. § 205.

[18] *Qwest ex parte*, Attachment at 2; *Verizon ex parte*, Attachment at 22.

therefore may not order relief under section 205. Verizon also contends that the Commission must investigate each incumbent LEC tariff individually to determine if a violation of the Act has occurred.

As explained below, Verizon's and Qwest's assertions are wrong, both as to the state of the record and as to the Commission's legal authority. Consequently, there is no basis for delaying long overdue corrective action, *e.g.*, through individualized Commission review and findings with respect to each of the major incumbent LECs' tariffs, as suggested by Verizon. This is especially true in this context, where uniform performance measures and standards are to be applied to all Tier 1 incumbent LECs.[19]

Verizon argues that, in the past, the Commission has ordered service credits only after investigating individual incumbent LEC tariffs.[20] However, there is no statutory provision requiring the Commission to undertake such an individualized review, and Verizon cites no authority to that effect. Indeed, the Commission has stated that

> if we conclude that a tariff charge, classification, regulation, or practice is or will be unlawful, we may, within the broad limits of our discretion, select from a number of options to remedy the defects. We may, for example, prescribe reasonable provisions, Sec. 205(a), and Sec. 201(a), direct the carrier to file revisions correcting the unlawfulness, or take such other action not inconsistent with the Act as may be necessary to exercise our functions. We may institute broad policy changes while leaving fine-tuning for future proceedings.[21]

In fact, the special access provisioning proceeding is similar to the one underlying the Commission's 1992 collocation order, a case that Verizon has mischaracterized.[22] There, the Commission conducted a general rulemaking proceeding, not a tariff investigation, and made a general finding that certain incumbent LEC collocation practices were unlawful. As a result, the Commission required all Tier 1 LECs to amend their affected tariffs.[23]

Thus, it is clear that the Commission may exercise its section 205 authority to prescribe tariff or contract terms if it finds that a rate, classification, or practice is

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[19] *See, e.g.*, Reply Comments of WorldCom, Inc. at 16 (Feb. 12, 2002) ("WorldCom Reply").

[20] *See Verizon ex parte*, Attachment at 22.

[21] *Investigation of Access and Divestiture Related Tariff*, Memorandum Opinion and Order, 97 F.C.C.2d 1082, ¶ 70 (1984) (internal citations omitted).

[22] *See Verizon ex parte*, Attachment at 22-23, n.17 (*citing Expanded Interconnection with Local Telephone Company Facilities*, 7 FCC Rcd 7369 (1992)).

[23] *See Expanded Interconnection with Local Telephone Company Facilities*, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369, ¶¶ 3, 223-25 (1992).

unlawful. The record in this proceeding provides ample basis for the Commission to make such a determination. Indeed, any fair-minded review of the evidence supports the conclusion that the incumbent LECs do not provide special access services to carriers or end users in a just, reasonable, and nondiscriminatory manner,[24] and the vast majority of commenters agree that the imposition of specific performance measures and standards (as proposed by the JCIG) is the best way to deter continued unlawfully anticompetitive behavior by the incumbent LECs.[25] Qwest's and Verizon's arguments to the contrary are unsupported by the vast record in this proceeding, and the Commission accordingly should emphatically reject their efforts to prolong the indefensible *status quo*.

Finally, Verizon's assertion that the Commission has previously refrained from implementing service quality standards when the record demonstrates that the market in question is competitive,[26] is inapplicable here, because the record clearly shows that special access service is not competitive. Indeed, as the record demonstrates, market discipline from the largest wholesale and retail customers has not provided incumbents with the necessary incentives to provide adequate performance. That is the very reason why service quality standards are needed to ensure that incumbent LECs provide special access services in a manner consistent with their statutory obligations.[27]

B. Expedited Complaint Process

JCIG's proposed expedited complaint process is in accord with section 208 of the Act[28] and designed to compensate customers for damages they suffer without requiring them to incur extensive litigation costs. There is no merit to Verizon's assorted

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[24] *See, e.g.*, Comments of WorldCom, Inc. at 12-21 (Jan. 22, 2002) ("WorldCom Comments"); WorldCom Reply at 13 (citing the New York Public Service Commission's conclusion that Verizon appears to discriminate against its carrier customers); Comments of Cable and Wireless USA, Inc. at 8 (Jan. 22, 2002); Comments of AT&T Corp. at 2, 3 (Jan. 22, 2002).

[25] The Commission should reject Verizon's attempt to hide behind the claim that there are "no data from which the Commission could conclude that the ILECs' special access provisioning constitutes a violation of the Act." *Verizon ex parte*, Attachment at 24. After all, Verizon and its fellow BOCs have prevented the Commission from gathering all of the data demonstrating the incumbent LECs' deficient special access performance, while JCIG (along with several state commissions) has sought to ensure that the Commission has access to all relevant data.

[26] *See Verizon ex parte*, Attachment at 23 (*citing Establishment of Policies and Procedures for Consideration of Applications to Provide Specialized Common Carrier Services in the Domestic Public Point-to-Point Microwave Radio Service and Proposed Amendments to Parts 21, 43 and 61 of the Commission's Rules*, 78 F.C.C.2d 1291, ¶ 6 (1980)).

[27] Verizon's argument that the service credits proposed by JCIG are unreasonable because the service levels are set at "unreasonably high levels" is addressed above in the discussion of JCIG's proposed measurements and standards.

[28] 47 U.S.C. § 208.

arguments that the expedited complaint process would somehow violate the Constitution or the Act. For instance, contrary to Verizon's assertion, JCIG's proposal to impose liability absent a *force majeure* event would not deny incumbent LECs "a fair opportunity to respond to allegations, as is required by the Constitution."[29] The enforcement process proposed here cannot be viewed in isolation. Rather, it must be viewed in context, along with the applicable measurements and standards. Taken as a whole, JCIG's proposal provides the incumbent LECs ample allowances for reasonable excuses for poor performance (*e.g.,* verifiable customer-not-ready ("CNR") events).[30] And, despite the reasonableness of the proposed measurements, the vast majority of the standards under JCIG's plan do not require 100 percent performance.[31] Thus, the measurements and standards themselves already provide allowances for the vast majority of circumstances, other than *force majeure* events, that could reasonably justify an incumbent LEC's failure to comply with a particular standard. The evidence in any enforcement proceeding would come from the incumbent LEC itself, avoiding any objection as to its veracity. In those rare circumstances in which an incumbent LEC's non-compliance can be justified by an event that does not involve a *force majeure* and that is not already reflected in the relevant measurement or standard, the incumbent would be free to provide evidence of the extenuating circumstances and seek a waiver of the *force majeure* limitation.

Verizon's statutory claims fare no better than its Constitutional argument. Verizon asserts that under the expedited process, purchasing carriers would not "bear[] the burden of demonstrating that the defendant's conduct violates the Act, as is required under Section 208."[32] In fact, JCIG's proposal would require the customer to meet the initial burden of identifying a missed benchmark standard or parity standard. In adopting the relevant standards, the Commission will have already determined that failure to meet any such standard is *prima facie* evidence that the incumbent's conduct violates the Act (*e.g.*, that failure to meet a particular performance standard constitutes an unjust or unreasonable practice). And as noted above, because evidence of the violation will come from data provided by the incumbent LEC itself, the incumbent LEC will not have any grounds for objecting to the veracity of the facts underlying the complaint.

Verizon also asserts that the expedited process would allow the injured party to collect "self-effectuating liquidated damages" in violation of the Act, and "regardless of

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[29] *Verizon ex parte*, Attachment at 25.

[30] *See, e.g.*, Letter to Chairman Michael K. Powell, FCC, from JCIG, Attachment A at 7, Measurement JIP-SA-4 (Jan. 22, 2002).

[31] *See, e.g.*, *id.* (requiring only 98% on-time performance even with verifiable CNR events taken into account). In addition, JCIG has proposed a sliding scale for penalties and damages. Thus, if the incumbent LEC misses the applicable benchmark or parity standard by a small amount, the remedy will be correspondingly small. A more substantial violation will be subject to a more substantial remedy.

[32] *Verizon ex parte*, Attachment at 25.

whether or not the purchasing carrier actually suffered any harm."[33] But Verizon ignores the fact that there is a difference between the *expedited* process proposed by JCIG and a *self-effectuating* one. The fact that damages may be more rapidly assessed under JCIG's proposal does not mean that such damages are either "self-effectuating" or automatic.[34] Under JCIG's proposal, a customer would either file a statement of damages based on its own calculations, or use a proxy schedule developed by the Commission. That proxy schedule presumably would reflect the Commission's decision about the likely financial harm caused by an incumbent LEC's failure to comply with specific rules. The Commission should recognize that there are trade-offs between precisely determining the amount of damages caused by misconduct and expeditiously determining that amount. In other contexts, the Commission has decided that the expeditious assessment of damages based on a proxy is preferable to a more time-consuming and costly case-by-case determination of damages.[35]

Contrary to Verizon's suggestion, the use of measurements would not allow the Commission to find an incumbent LEC liable in the absence of a violation of sections 201(b) or 202(a).[36] In fact, the very point of establishing measurements, standards, and reporting requirements is to put incumbent LECs on notice that non-compliance with such measures is *prima facie* evidence that an incumbent LEC has provisioned special access service in an unjust or unreasonable manner in contravention of section 201(b), or in an unreasonably discriminatory manner in violation of section 202(a). JCIG's goal is not to rack up damage awards but to ensure satisfactory performance.

Qwest also objects to JCIG's proposal that the Commission develop a proxy schedule for damages. Specifically, Qwest argues that the use of a Commission "proxy

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[33] *Id.* at 26.

[34] Contrary to Verizon's claims, there is far more than a "scintilla" of evidence that the current section 208 complaint process is inadequate to address the incumbent LECs' ongoing special access performance problems. *Compare Verizon ex parte*, Attachment at 25, *with*, *e.g.*, WorldCom Comments at 37 and WorldCom Reply at 17. JCIG's proposal is not designed to supplant the existing section 208 complaint process, but to provide another expedited mechanism, similar to the Accelerated Docket process, that can be used for discrete categories of recurring problems, such as those that exist in regard to special access provisioning.

[35] *See Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, First Order on Reconsideration, 15 FCC Rcd 8158, ¶ 17 (2000) (finding that an "appropriate proxy" for an instance of slamming is 150% of the amounts collected by the unauthorized carrier from the subscriber following a slam).

[36] *Verizon ex parte*, Attachment at 26.

value" for damages would violate section 407 of the Act,[37] which requires "a complainant to prove damages under any circumstances."[38]

Qwest's argument fundamentally misconstrues the relationship between JCIG's proposal and section 407. The JCIG proposal sets forth an expedited complaint process that, like the existing "rocket docket" process,[39] is designed to be consistent with the section 208 requirements for complaints. JCIG's proposal in no way implicates section 407, which sets forth the procedure by which a complainant may petition a court to *enforce* an FCC order for payment of damages that was issued as the result of the complainant's section 208 complaint. Section 407 does not even come into play unless a party refuses to comply with an FCC order (issued as a result of a section 208 complaint) directing it to pay damages.[40] In the context of JCIG's proposal, therefore, section 407 would come into play only *after* the entire section 208 expedited complaint process had run its course, culminating in a Commission order awarding damages against an incumbent LEC that subsequently refused to pay those damages.

Despite the clear irrelevance of section 407 to the pre-enforcement complaint process proposed by JCIG, Qwest argues that JCIG's proposal would violate section 407 because it would "trump" or "alleviate" the "need to prove both liability and damages in court" without affording the carrier "due process."[41] This argument is clearly without merit. JCIG's proposal would not diminish or alter any requirement of section 407, including the requirement that a complainant seeking enforcement of an FCC order for damages must file a petition in an appropriate district or state court.[42]

Nor would adoption of JCIG's proposal abridge the due process rights of any incumbent LEC. For instance, incumbents will have had the opportunity to participate in (and in fact will have participated in) the proceeding establishing the applicable measurements, standards, reporting requirements and remedies. Likewise, any FCC order finding a violation would be based on information provided by the incumbent LEC itself. Even after an initial determination is made that a violation of the Act and/or the Commission's rules had occurred, the incumbent LEC would have a fair opportunity to

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[37] 47 U.S.C. § 407.

[38] *Qwest ex parte*, Attachment at 2.

[39] *See* 47 C.F.R. § 1.730 (setting forth rules for the Enforcement Bureau's accelerated docket).

[40] By its own terms, section 407 can be triggered only "[i]f a carrier does not comply with an order for the payment of money within the time limit in such an order." 47 U.S.C. § 407.

[41] *Qwest ex parte*, Attachment at 2.

[42] JCIG's proposal also would not alter section 407's requirement that, once such a petition is filed, the suit must "proceed in all respects like other civil suits for damages, except that on the trial of such suits the findings and order of the Commission shall be prima facie evidence of the facts therein stated." 47 U.S.C. § 407.

rebut the evidence or justify its conduct. If an incumbent LEC were found liable, it still would have an opportunity to comment on the customer's statement of damages. Finally, an incumbent LEC that has refused to pay damages assessed as a result of JCIG's proposed expedited process would retain all of the due process rights it currently enjoys under section 407. Thus, Qwest's arguments are simply wrong.

C. Streamlined Forfeiture Process

JCIG's proposed streamlined forfeiture process is fully in accord with the forfeiture requirements of section 503 of the Act,[43] which authorizes the Commission to penalize carriers for violations of the Communications Act. Given the incumbent LECs' poor performance, adoption of the JCIG proposal is necessary if the Commission is to enhance the incumbents' incentives to provision special access in a reasonable and non-discriminatory manner. As explained below, JCIG's proposal suffers from none of the defects alleged by Verizon or Qwest.

In particular, JCIG's proposal would not "gut the critical procedural protections of Section 503" in any of the ways identified by Verizon.[44] First, JCIG's proposal would not "automatically" equate an incumbent LEC's failure to meet a performance measurement with a violation of the Act or a Commission rule.[45] Instead, the proposal would merely establish a rebuttable presumption of such a violation.

Second, Verizon incorrectly assumes that under JCIG's proposal the Commission would issue NALs that "merely note that a carrier failed to satisfy metric X or sub-metric Y" without "explain[ing] why that failure constitutes unjust, unreasonable, or unreasonably discriminatory service."[46] JCIG's proposal contemplates that the Commission would include in each NAL language explaining that there is an apparent failure to satisfy a particular benchmark standard or parity standard, and that the Commission has already concluded (*i.e.*, in the rulemaking that would implement JCIG's proposal) that such failure creates a presumption of unjust, unreasonable, or unreasonably discriminatory service.

Third, JCIG does not dispute that the Commission must make an initial showing that an incumbent LEC is liable for provisioning special access service in an unjust, unreasonable, or unreasonably discriminatory manner before it can issue a forfeiture order.[47] However, the Commission can satisfy this initial obligation by relying on the incumbent LEC's *own documentation* to demonstrate that the LEC has missed a standard unless the incumbent LEC can justify its presumptively unjust, unreasonable, or

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[43] 47 U.S.C. § 503.

[44] *Verizon ex parte*, Attachment at 28.

[45] *Id.* at 28-29.

[46] *Id.* at 29.

[47] *See id.*

unreasonably discriminatory conduct (*e.g.*, by producing evidence of a *force majeure* event). Regardless of whether the Commission accepts JCIG's suggestion that the latter justification should be based on clear and convincing evidence, JCIG urges the Commission to recognize that the efficacy of the streamlined forfeiture process depends on the Commission's strict enforcement of the relevant standards. As explained above, any measurements the Commission adopts will already grant the incumbent LECs reasonable opportunity to account for various valid excuses (*e.g.*, verifiable CNR events). Therefore, the Commission should insist that an incumbent LEC's justification for failing to meet an applicable standard be compelling enough to overcome the presumption that the incumbent LEC has provisioned special access service in an unjust, unreasonable, or unreasonably discriminatory manner.

Qwest also misinterprets JCIG's proposed streamlined forfeiture process. Specifically, Qwest claims that the proposal would "cut off [the] fundamental right" of incumbent LECs to "refus[e] to pay the specified [forfeiture] amount and defend[] a subsequent lawsuit by the United States."[48]

This objection also implicates a section of the Act that has nothing to do with JCIG's proposal. JCIG seeks to establish a streamlined forfeiture process that would be governed by section 503 of the Act, which sets forth the procedures by which the Commission may assess a forfeiture.[49] JCIG's proposal merely streamlines the section 503 process for issuing an NAL and forfeiture order against incumbent LECs that have failed to provision special access in a just, reasonable and reasonably nondiscriminatory manner. JCIG's proposal does not affect a carrier's right to refuse to pay a forfeiture and defend itself in a subsequent lawsuit, pursuant to section 504 of the Act.[50]

V. Business Customers Incur Substantial Costs as a Result of Untimely and Unpredictable Provisioning of Incumbent LEC Special Access Services

The provisioning of special access services by incumbent LECs is the most problematic and unpredictable component of service cutovers – *i.e.*, the migration of services from one carrier to another. As explained below, this migration is especially costly for the vast majority of large and medium-sized businesses that operate multiple locations throughout the nation.

With a few exceptions, special access services utilized by business customers are purchased through interexchange carriers as part of end-to-end services. Many businesses pay hundreds of thousands of dollars per month, or even well over one million dollars per month, for corporate data communications services, including interexchange and special access components. The costs of untimely and unpredictable provisioning of

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[48] *Qwest ex parte*, Attachment at 3.

[49] 47 U.S.C. § 503.

[50] 47 U.S.C. § 504(a).

special access services are substantial and immediate,[51] and involve both direct and indirect costs.

Direct costs include those attributable to: (1) unrealized cost savings due to the delay in migrating to the new carrier's services; and (2) the period during which the customer is required to utilize (and pay for) the end-to-end services of its current carrier and the special access services supporting the new carrier's services.

A service cutover often involves the migration to lower cost services of the new carrier as well as improved functionality and operational efficiency and, sometimes, better account support. Delayed provisioning of special access services requires the customer to retain the (often higher cost) services of the current carrier for longer than if the migration were completed in a reasonable period of time. As a result of this delay, the customer loses the cost savings and other benefits that it otherwise would have realized.

Untimely or unpredictable special access service provisioning can substantially increase the cost of service cutovers. Business customers are confronted with a Hobson's choice. They can delay the cutover of those locations related to the sites subject to the provisioning delays (or for which provisioning intervals are not provided) and thereby risk extending the duration of the overall process (and delay realization of the cost savings and other benefits associated with the new carrier's services).[52] Alternatively, the customer can direct the new carrier to authorize the serving LECs to provision the special access services at the related locations that (eventually) will support the new carrier's end-to-end services.[53] If it chooses the latter option, the customer must begin to pay for the special access services immediately even though the customer's traffic remains on the current carrier's network. Under either option, the customer continues to use (and pay for) the current carrier's services at the related locations *until* the new carrier's services (both the interexchange and incumbent LEC-provided access components) are available at all related locations.[54]

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[51] The demand for special access services is expected to continue growing as the demand for data communications continues to grow. More locations within an organization will require special access services as bandwidth-intensive applications intended to enhance productivity continue to be rolled out. The growth in incumbent LEC special access services corroborates this trend.

[52] "Related" locations are those within the same business unit that regularly communicate with each other. If critical corporate-wide locations are subject to provisioning delays, the entire service cutover can be affected. The problem is compounded by the fact that DS-3 access service is increasingly required at these critical locations.

[53] Provisioning issues at major locations can extend service cutover schedules even further.

[54] Most corporations do provide for brief periods of concurrent operation of the services of the incumbent carrier and the new IXC to test the latter's services. The delays

Special access provisioning problems can have a substantial domino effect on the time and cost of service cutovers for business customers, especially those with multiple locations. Frame relay and ATM, IP-enabled frame relay and ATM and IP-VPN services provide varying degrees of "virtual connectivity." Typically, the current carrier's services are retained until all or a preponderance of a company's related locations are cut over to the new carrier's services. This is necessary in order to validate that the new carrier's services (the customer's "new network") operate according to the customer's network design. Until all the related locations are connected to the new network, the functionality and reliability of the new network cannot be validated properly. Unless and until the new network is validated, the current carrier's services are retained so that the customer's ongoing communications requirements continue to be met.[55]

Delayed and unpredictable provisioning of incumbent LEC special access services also imposes substantial indirect costs on customers. Such indirect costs include the costs associated with: (1) delay in deploying network-based business applications intended to enhance business efficiency, maximize competitive advantage, or reduce costs; (2) delay in maximizing the availability of corporate services and access to information at all locations; (3) deferring e-commerce business solutions with business partners, suppliers and customers; and (4) continued allocation of limited internal resources to support a delayed carrier migration. These costs vary from customer to customer, and can easily exceed the monthly direct costs.

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identified herein are in addition to these planned, limited periods of dual carrier operations.

[55] For private line services, the migration process is less cumbersome. Where special access services are provisioned to the two locations served by a private line, the customer can test the new end-to-end service and disconnect the service of the original carrier as soon as the new carrier's service is up and running. Compared to other interexchange and IP services utilized for data communications, growth in demand for private line service is modest, at best. As the migration to data communications services based on virtual connectivity grows, the special access provisioning delays become increasingly problematic.

VI. Conclusion

For all of the foregoing reasons, the Commission should adopt the measurements and standards, reporting obligations, and enforcements mechanisms proposed by JCIG, subject only to the modifications mentioned in section I, above.

Respectfully submitted,

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ATTACHMENT A

JOINT COMPETITIVE INDUSTRY GROUP

PERFORMANCE MEASUREMENTS & STANDARDS

FOR ILEC SPECIAL ACCESS SERVICE

EXPLANATION OF JCIG PERFORMANCE STANDARDS

Submitted: September 26, 2002

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ILEC Performance Measurements and Standards

ORDERING

Measurement: JIP-SA-1 FOC Receipt

Description

The Firm Order Confirmation (FOC) is the ILEC response to an Access Service Request (ASR), whether an initial or supplement ASR, which provides the CLEC or IXC Carrier with the specific Due Date on which the requested circuit or circuits will be installed. The expectation is that the ILEC will conduct a minimum of an electronic facilities check to ensure due dates delivered in FOCs can be relied upon. The performance standard for FOCs received within the standard interval is expressed as a percentage of the total FOCs received during the reporting period. A diagnostic distribution is required along with a count of ASRs withdrawn at the ILEC's request due to a lack of ILEC facilities or otherwise.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent FOCs Received within Standard	- DS0 => 98.0% within 2 business days
	- DS1 => 98.0% within 2 business days
	- DS3 => 98.0% within 5 business days
	- OCn - ICB (Individual Case Basis)
FOC Receipt Distribution	- Diagnostic
ASRs Withdrawn at ILEC Request Due to a Lack of ILEC Facilities or Otherwise	- Diagnostic

Basis for JCIG Standard

The timely receipt of FOCs is required to allow carriers purchasing special access services to communicate due dates and coordinate installation with their end users. The carrier must be able to depend on the FOC due date as an accurate installation date, so it is imperative that the ILEC conducts a facilities check prior to issuing the FOC. Thus, to ensure that the ILEC conducts the facilities check prior to issuing the FOC, JIP-SA-1 provides a longer time frame in which the ILEC must return the FOC than some comparable standards (such as those for UNEs). For example, in the UNE context, Tennessee requires ILECs to return FOCs within 1 hour if the order is processed on a fully mechanized basis. Other states similarly require FOC returns within a matter of a few hours when electronic orders are submitted. *See, e.g.,* NY-Verizon Carrier to Carrier Standards and Metrics, OR-1 (2 hours for POTS/Pre-Qualified Complex flow-through orders). Even for orders requiring some degree of manual processing, a standard of 48 hours or less is common. *See, e.g.,* TN-O-91 – Firm Order Confirmation Timeliness (48 hours for interconnection trunks). Because the ASR process is largely mechanized, similar response times could be achieved in the special access context.

A time limit of two business days for DS0 and DS1 circuits and five business days for DS3 circuits is reasonable because it provides an ILEC with a sufficient amount of time in which to conduct the facilities check. In many instances, the ILEC can verify electronically that sufficient facilities exist. For example, in its August 16, 2002, *ex parte*, Verizon confirms that the facilities check process "is now being automated." (*Verizon ex parte* at 9, n.10). SBC also has stated that it conducts electronic facilities checks. Qwest states that it already returns FOCs within 72 hours. With electronic facilities checks, an ILEC should be able to return a reliable FOC within the 2 day/5 day standards proposed.

Finally, recently released SBC audit data demonstrate that, on average, SBC returned FOCs for both DS1s and DS3s to its 272 affiliate within one day. *See SBC 272 Audit Report,* Performance Measure Differences, Attachment A-7, Objective VIII, Procedure 3 at 2 (filed in CC Docket No. 96-150 on Sept. 16, 2002). The SBC audit data does not

disclose whether SBC conducts a facilities check prior to issuing FOCs. If SBC conducted a facilities check prior to issuing the FOCs that formed the basis of the audit data, then such data demonstrate that ILECs have provided – and can provide – FOCs in shorter timeframes than stated in the JCIG proposal, and thus, that the JCIG proposal is attainable. Non-discrimination requirements obligate SBC to provide at least this same level of performance for non-affiliates.

If SBC did not conduct a facilities check prior to issuing the FOCs, such data indicates that SBC has returned FOCs in one-half of the time – without a facilities check – proposed by JCIG. Therefore, the additional time (beyond what SBC has reported) provided in the JCIG metric (one day for DS0s and DS1s and 4 days for DS3s), should be sufficient for SBC and other Tier 1 LECs to conduct the facilities check prior to issuing a FOC.

ORDERING

Measurement: JIP-SA-2 FOC Receipt Past Due

Description

The FOC Receipt Past Due measure tracks all ASR requests that have not received a FOC from the ILEC within the expected FOC receipt interval, as of the last day of the reporting period, and do not have an open, or outstanding, Query/Reject. This measure gauges the magnitude of late FOCs and is essential to ensure that FOCs are being received in a timely manner from the ILECs. A distribution of these late FOCs, along with a report of those late FOCs that do have an open Query/Reject, is required for diagnostic purposes.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent FOC Receipt Past Due – Without Open Query/Reject	< 2.0 % FOC Receipt Past Due
FOC Receipt Past Due – Without Open Query/Reject - Distribution	- Diagnostic
Percent FOC Receipt Past Due – With Open Query/Reject	- Diagnostic

Basis for JCIG Standard

The purpose of this metric is to provide information about FOCs that are past due. The Percent FOC Receipt Past Due without open query/reject measurement is the inverse of the standard set forth in JIP-SA-1. If ILECs return 98% or more of the FOCs within the specified time period, then fewer than 2% of the FOCs should be received late. Therefore, the rationale for the performance standard in JIP-SA-1 also applies to this metric.

The diagnostic measures provide information on the magnitude of late orders (whether orders are 2 days late, 5 days late, etc.).

ORDERING

Measurement: JIP-SA-3 Offered Versus Requested Due Date

Description
The Offered Versus Requested Due Date measure reflects the degree to which the ILEC is committing to install service on the CLEC or IXC Carrier Requested Due Date (CRDD), when a Due Date Request is equal to or greater than the ILEC stated interval. A distribution of the delta, the difference between the CRDD and the Offered Date, for these FOCs is required for diagnostic purposes.

Performance Standard
Percent Offered with CRDD (where CRDD = > ILEC Stated Interval) = 100%
Offered versus Requested Interval Delta – Distribution - Diagnostic

ILEC Stated Intervals: To be determined by ILEC

Basis for JCIG Standard
Percent Offered with CRDD
JIP-SA-3 examines orders where the CRDD is equal to or greater than the ILEC's stated standard interval. In these situations, the ILEC always should return a FOC for the requested date. Indeed, Verizon, SBC, and Qwest all state that this is their policy. *See Verizon ex parte* (Aug. 16, 2002); *SBC ex parte* (Aug. 23, 2002); *Qwest ex parte*, Attachment at 3 (Aug. 8, 2002). The JCIG standard merely holds these ILECs to their policy.

A 100% standard is proposed in recognition of the critical role that certainty and dependability play in the special access process. Carriers often are required to submit bids to end users with specific installation dates or specific installation windows. Moreover, in many cases, SLAs with an end user will include penalties if circuits are not provisioned by a specific date. Carriers must be able to rely on the ILEC's stated interval to satisfy these end user demands. JIP-SA-3's standard provides carriers with the assurances necessary to make these commitments.

Standard Interval
The diagnostic examines the delta between the offered and requested dates. JCIG proposes that the offered interval should be no longer than the least of: the standard interval (as described below); the ILEC stated interval; or the interval actually provided to the ILEC's affiliates or retail customers in that state.

JCIG proposes that the standard intervals for provisioning be 7 days for DS0s, 7 days for DS1s, and 14 days for DS3s. As illustrated herein, the proposed standard is based on an average of the ILECs' own posted installation intervals. In each case, at least one ILEC offers a stated interval that is shorter than the interval established under the proposed standard.

	Low	High	Average
DS0	5	12	7
DS1	5	9	7
DS3	7	20	13

PROVISIONING

Measurement: JIP-SA-4 On Time Performance To FOC Due Date

Description

On Time Performance To FOC Due Date measures the percentage of circuits that are completed on the FOC Due Date, as recorded from the FOC received in response to the last ASR sent. Customer Not Ready (CNR) situations may result in an installation delay. The On Time Performance To FOC Due Date is calculated both with CNR consideration, *i.e.*, measuring the percentage of time the service is installed on the FOC due date while counting CNR coded orders as an appointment met, and without CNR consideration.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent On Time to FOC Due Date - With CNR Consideration = > 98.0% On Time
Percent On Time to FOC Due Date - Without CNR Consideration - Diagnostic

Basis for JCIG Proposal

This JCIG standard follows from the proposition that if an ILEC establishes the promised date (especially if it does so after conducting a facilities check), then it should meet – and be held to – that date. In many instances, the customer must have other vendors on site (to install new equipment, make other changes, etc.) at the same time as the ILEC vendor to ensure a seamless installation. Therefore, the customer must be able to rely on the FOC date such that it can coordinate the installation activities of all of its vendors.

The FOC operates as a date certain on the customer side. That is, the ILEC expects the customer to be ready for the installation on the ILEC-established date, and the ILEC imposes penalties on the customer (whether a carrier or the ILEC end user) if it is not ready to receive services on the FOC date. ILECs must similarly be held accountable, particularly since it is the ILEC that establishes the due date.

As explained above (*see* JIP-SA-1), the ILEC is to return the FOC only after it has conducted a facilities check. Thus, carriers expect the FOC date to be a "real" date, and not merely an estimated date. The only exceptions to the FOC date being a real date should be circumstances beyond an ILEC's own control. These would be rare occurrences, and the 2% margin allows sufficient leeway for unexpected circumstances.

In our experience, ILECs frequently provide FOCs without having conducted a reliable facilities check. In other situations, ILECs postpone conducting work necessary for the installation to occur on the FOC date until too late in the process, thus leading to missed orders. ILECs will not have any incentive to correct these deficiencies absent a rigorous standard for On Time Performance.

The JCIG Standard would improve current ILEC performance, and is attainable. In the 2001 ARMIS data, at least two ILECs reported On Time Performance of greater than or equal to 96%. Since 1998, every Tier 1 ILEC has reported an On Time Performance above 90% and 4 of the 6 have reported at least one year in which they exceeded 95%.

Further, in some instances the ILECs have agreed to performance standards approximating the JCIG standard. SWBT's "MVP Tariff" commits to provide On Time Performance of up to 97.7% for DS0s and 96.7% in DS1s. *See* SWBT FCC Tariff No. 73, § 38.3.

PROVISIONING

Measurement: JIP-SA-5 Days Late

Description

Days Late captures the magnitude of the delay, both in average and distribution, for those circuits not completed on the FOC Due Date, and the delay was not a result of a verifiable CNR situation. A breakdown of delay days caused by a lack of ILEC facilities is required for diagnostic purposes.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Average Days Late	< 3.0 Days
Days Late Distribution	- Diagnostic
Average Days Late Due to a Lack of ILEC Facilities	- Diagnostic

BellSouth/Time Warner Proposal

Average Days Late	< 5.0 days for year 1, 3 days for year 2.

Basis for JCIG Proposal

Similar to JIP-SA-4, the purpose of this standard is to enable carriers to rely on the ILEC-provided FOC. The ILEC should not miss the FOC date absent circumstances beyond its control. If the ILEC misses the FOC date, however, then it should complete the circuit promptly.

JCIG believes an average of three days for missed circuits is reasonable and attainable. The New York Commission has established three days as the appropriate standard. Further, three days is the standard that BellSouth commits to meet after the first year under the BellSouth/Time Warner proposal. All Tier 1 LECs should be expected to meet this standard.

PROVISIONING

Measurement: JIP-SA-6 Average Intervals - Requested/Offered/Installation

Description

The intent of this measure is to capture three important aspects of the provisioning process and display them in relation to each other. The Average CLEC or IXC Carrier Requested Interval, the Average ILEC Offered Interval, and the Average Installation Interval, provide a comprehensive view of provisioning, with the ultimate goal of having these three intervals equivalent.

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Average Requested Interval	- Diagnostic
Average Offered Interval	- Diagnostic
Average Installation Interval	- Diagnostic

PROVISIONING

Measurement: JIP-SA-7 Past Due Circuits

Description

The Past Due Circuits measure provides a snapshot view of circuits not completed as of the end of the reporting period. The count is taken from those circuits that have received an FOC Due Date but the date has passed. Results are separated into those held for ILEC reasons and those held for CLEC or IXC Carrier reasons (CNRs), with a breakdown, for diagnostic purposes, of Past Due Circuits due to a lack of ILEC facilities. A diagnostic measure, Percent Cancellations After FOC Due Date, is included to show a percent of all cancellations processed during the reporting period where the cancellation took place after the FOC Due Date had passed

Levels of Disaggregation

- DS0
- DS1
- DS3
- OCn

Performance Standard

Percent Past Due Circuits - Total ILEC Reasons	< 3.0 % > 5 days beyond FOC Due Date
Percent Past Due Circuits - Due to Lack of ILEC Facilities	- Diagnostic
Percent Past Due Circuits - Total CLEC Reasons	- Diagnostic
Past Due Circuits Distribution	- Diagnostic
Percent Cancellation After FOC Due Date	- Diagnostic

BellSouth/Time Warner Proposal

Percent Past Due Circuits – Total BellSouth Reasons	< 3.0 % > 5 days beyond FOC Due Date.

Basis for JCIG Proposal

JIP-SA-7 provides a snapshot of pending circuits. There is no basis for more than a small percentage of the circuits (if that) to be significantly late. The 3.0% standard is reasonable and attainable. BellSouth, for example, already has agreed to this identical standard in its agreement with Time Warner. Moreover, if an ILEC meets the standard in JIP-SA-5 (*i.e.,* has a monthly average of 3 days late or less), only a small percentage of orders should be 5 days or more late at any given time. Allowing for a 3% leeway in this snapshot recognizes the occasional circumstances beyond an ILEC's control that prevent the ILEC from satisfying the FOC date. Any percentage greater than 3% signifies the likely existence of problems within the ILEC's control.

PROVISIONING

Measurement: JIP-SA-8 New Installation Trouble Report Rate

Description
New Installation Trouble Report Rate measures the quality of the installation work by capturing the rate of trouble reports on new circuits within 30 calendar days of the installation.

Levels of Disaggregation
- DS0
- DS1
- DS3
- OCn

Performance Standard
New Installation Trouble Report Rate <= 1.0 trouble reports per 100 circuits installed

Basis for JCIG Proposal
As a result of the network troubles sought to be measured herein, end user customers encounter significant service delays.

Absent this measurement, ILECs will not have a sufficient incentive to ensure that the circuits that they provision are provisioned correctly and are not subject to any underlying problems. If an ILEC is held only, for example, to an On Time Performance standard, it will have an incentive to install the circuit on time, so as to satisfy the FOC date, even if it knows that there is a problem with the circuit (facility or otherwise) such that the circuit likely will fail within a short period of time. This measurement will promote integrity in the installation process.

This measurement is reasonable and attainable. Some ILECs already record this data and provide it to their carrier customers.

MAINTENANCE & REPAIR

Measurement: JIP-SA-9 Failure Rate

Description

Failure Rate measures the overall quality of the circuits being provided by the ILEC and is calculated by dividing the number of troubles resolved during the reporting period by the total number of "in service" circuits, at the end of the reporting period, and is then annualized by multiplying by 12 months.

Performance Standard

Failure Rate Annualized	- Below DS3	<= 10.0%
	- DS3 and Above	<= 10.0%

Basis for JCIG Proposal

Capturing the overall failure rate is necessary to assess the ILEC's overall performance, and to avoid the installation of circuits that are fraught with troubles and likely to fail.

The proposal recognizes that some circuit failure is beyond the ILEC's control. Any failure greater than 10% (on an annualized basis) signals problems within the ILEC's control. In fact, ILECs already recognize that this metric is attainable; as one example, SWBT's FCC Tariff No. 73 provides for a failure rate as low as 10.6% (annualized) for DS1s. *See* SWBT FCC Tariff No. 73, § 38.3. There is no basis for other Tier 1LECs not to achieve a similar annualized percentage (10%).

MAINTENANCE & REPAIR

Measurement: JIP-SA-10 Mean Time to Restore

Description

The Mean Time To Restore interval measures the promptness in restoring circuits to normal operating levels when a problem or trouble is referred to the ILEC. Calculation is the elapsed time from the CLEC or IXC Carrier submission of a trouble report to the ILEC to the time the ILEC closes the trouble, less any Customer Hold Time or Delayed Maintenance Time due to valid customer, CLEC, or IXC Carrier caused delays. A breakdown of the percent of troubles outstanding greater than 24 hours, and the Mean Time to Restore of those troubles recorded as Found OK / Test OK, is required for diagnostic purposes.

Levels of Disaggregation

- Below DS3 (DS0 + DS1)
- DS3 and Above (DS3 + OCn)

Performance Standard

Mean Time to Restore	- Below DS3	< = 2.0 Hours
	- DS3 and Above	< = 1.0 Hour
% Out of Service > 24 Hrs		- Diagnostic
Mean Time to Restore – Found OK / Test OK		- Diagnostic

Basis for JCIG Proposal

Customers rely on telecommunications networks to be up and running 24 hours per day/7 days per week. Customers have a right to expect that the networks will be repaired promptly. A circuit offering "four nines" of reliability (*i.e.,* the circuit is available 99.99% of the time) would be down less than one hour over the course of an entire year. Therefore, the proposed standard reflects the goal of providing a "four nines" of reliability in special access.

ILECs already track and record maintenance and repair statistics in several forums. For example, several ILECs already report this data to their carrier customers. ILECs also track this data for purposes of the 272 reports, and in accordance with certain state requirements.

Data from the SBC 272 audit report demonstrate that SBC restored over 50% of the circuits of its affiliates within one hour of circuit failure. *See SBC 272 Audit Report*, Performance Measure Differences, Attachment A-7, Objective VIII, Procedure 3 at 3. Although the data does not illustrate the mean time to restore, it does demonstrate that SBC restored over half of the circuits (to their affiliates) promptly, and thus, that SBC – and other ILECs – are capable of restoring circuits to their carrier customers in significantly shorter time frames than they currently provide.

MAINTENANCE & REPAIR

Measurement: JIP-SA-11 Repeat Trouble Report Rate

Description

The Repeat Trouble Report Rate measures the percent of maintenance troubles resolved during the current reporting period that had at least one prior trouble ticket any time in the preceding 30 calendar days from the creation date of the current trouble report.

Levels of Disaggregation

- Below DS3 (DS0 + DS1)
- DS3 and Above (DS3 + OCn)

Performance Standards

Repeat Trouble Report Rate	- Below DS3	<= 6.0%
	- DS3 and Above	<= 3.0%

Basis for JCIG Proposal

Repeat troubles often signify a latent weakness in the network. The repeat trouble report rate must be tracked so that ILECs can do the work necessary to fix the problems. This standard reflects a goal of providing a reliable special access network.

Some ILECs, such as Qwest, already measure repeat trouble trends. (*Qwest ex parte*, Aug. 8, 2002.) Additionally, ILECs already report repeat data to carrier customers. The data reported to JCIG members indicate that ILECs can obtain repeat trouble report rates that are significantly lower than those proposed by BellSouth/Time Warner.