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February 26, 2004

Via Electronic Delivery

Marlene Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: *Written Ex Parte*
Performance Measurements and Standards for
Interstate Special Access Services, CC Docket No. 01-321

Dear Ms. Dortch:

Attached is a letter from the Joint Competitive Industry Group to Chairman Michael K. Powell. Pursuant to the Commission's rules, 47 C.F.R. § 1.1206(b), this letter is being provided to you for inclusion in the public record of the above-referenced proceeding. Please do not hesitate to contact me if you have any questions regarding this submission.

Sincerely,



Gil M. Strobel

Attachment

cc:	Scott Bergmann	Matthew Brill	Ian Dillner
	Michael Engel	Samuel Feder	Jordan Goldstein
	Daniel Gonzalez	Christopher Libertelli	William Maher
	Jennifer Manner	Paul Margie	Pamela Megna
	Rodney McDonald	Barry Ohlson	Jessica Rosenworcel
	Bryan Tramont	Henry Thaggert	Julie Veach
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February 26, 2004

Via Electronic Filing

Chairman Michael K. Powell
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

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

Dear Chairman Powell:

In previous filings the Joint Competitive Industry Group (JCIG) has proposed performance measurements, standards, and reporting requirements as well as an enforcement plan for governing interstate special access services provided by Tier 1 incumbent local exchange carriers (LECs).¹ JCIG's proposal is designed to improve incumbent LECs' performance in this important area through the use of a concise set of metrics and an easily-administered enforcement process.

In this letter, JCIG responds to specific claims that the Bell Operating Companies (BOCs) made in a presentation they filed in support of their position that special access performance measurements are unnecessary.² As the attached document shows, the BOCs' claims are without merit and ignore the facts in the record of this proceeding as well as the marketplace realities experienced by the end users, wireless carriers, and competitive LECs that constitute JCIG. In particular, JCIG responds to the BOCs' claims by explaining that: the special access market is not competitive; the BOCs' tariffs do not provide sufficient performance guarantees to ensure adequate performance; the BOCs'

¹ See *ex parte* letter from A. Richard Metzger, Jr. to Magalie Salas, CC Docket No. 01-321 (Jan. 22, 2002) (attaching JCIG Proposal, "ILEC Performance Measurements & Standards in the Ordering, Provisioning, and Maintenance & Repair of Special Access Service"); *ex parte* letter from A. Richard Metzger, Jr. to William Caton, CC Docket No. 01-321 (Feb. 12, 2002) (attaching JCIG Proposal, "Essential Elements of a Special Access Provisioning Enforcement Plan"); *ex parte* letter from Ruth Milkman to Marlene Dortch, CC Docket No. 01-321 (June 18, 2002) (attaching JCIG Proposal Regarding Special Access Provisioning Remedies).

² *Ex parte* letter from Kathleen B. Levitz, BellSouth to Marlene Dortch, FCC, CC Docket No. 01-321 (Nov. 6, 2003).

Chairman Michael K. Powell

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special access performance is far from adequate; the BOCs' overwhelming market power makes it virtually impossible for customers to engage in meaningful negotiations with the BOCs; the JCIG proposal is realistic, achievable and necessary; the reports that the BOCs currently provide are severely deficient in both quality and scope; and enforcement efforts have been thwarted because objective measurements or standards for special access provisioning are non-existent.

The Commission should reject the BOCs' attempts to deny the problems with special access performance. Instead, the FCC should address the issue head-on by adopting JCIG's comprehensive solution, which incorporates meaningful measures, standards and enforcement mechanisms. Otherwise, the current problems with incumbent LEC special access performance will continue to persist, hampering competition and depriving consumers of access to timely and reliable service.

Respectfully submitted,

The Joint Competitive Industry Group

Attachment

The Need for Special Access Metrics: Why the Status Quo is Unacceptable

BOCs' claim: The special access market is competitive.

JCIG's response: The special access market is far from competitive, a point reinforced by the FCC's finding in the *UNE Triennial Review Order* that there are few alternatives to incumbent LEC high capacity loops and transport nationwide. The record in the special access metrics proceeding demonstrates that competitive local exchange carriers (LECs) and long distance carriers are heavily dependent on incumbent LECs for the last mile links needed to connect competitive networks to end-user customers. Wireless carriers are especially dependent, relying on the incumbent LECs for approximately 90-95% of the facilities used to connect base stations with mobile switching centers. To the extent competitive alternatives exist, they are most frequently deployed between incumbent LEC switching wire centers and IXC POPs in large urban areas and not in the areas where most end users and wireless carriers seek special access service.

BOCs' claim: Interstate special access tariffs provide performance guarantees.

JCIG's response: First and foremost, the JCIG membership is unified in its view that the critical goal is reasonable and reliable special access performance by the incumbent LECs – not monetary penalties. In addition, the incumbent LECs do not provide sufficient documentation to allow for independent auditing, making it impossible for customers to determine whether they are receiving the credits required by the tariffs. The metrics in the tariffs also lack clearly defined business rules. The end result is that the existing performance guarantees do not provide sufficient incentives to drive incumbent LECs to improve special access performance, as evidenced by their continued poor performance.

BOCs' claim: They are committed to, and are improving, their “very good service” to their special access customers.

JCIG's response: The BOCs' claims of improved performance suffer from several flaws:

- First, the BOCs' claims are based on unaudited ARMIS reports. ARMIS reporting does not include service provided to competitive LECs, CMRS providers, incumbent LEC affiliates or retail customers and is not disaggregated by carrier or type of circuit. In addition, most ARMIS data is reported on an annual basis, making it difficult for customers to obtain timely remedies for poor performance. ARMIS also lacks clear business rules. The lack of express and consistent definitions and business rules allows each incumbent LEC to measure performance differently and gives the incumbent LECs great latitude when reporting on their performance. For example, the ARMIS metric for Total Trouble Reports does not define what constitutes a trouble report, leaving it up to the individual LEC to

decide what to include in the metric. Similarly, the ARMIS metric for Percentage Commitment Met is based on incumbent LEC installation intervals, but these intervals are not defined, and customers have had difficulty obtaining the applicable intervals. Rather than relying on ARMIS, the FCC should use its authority to require the BOCs to file the reports they provide to individual customers. These reports, which the customers cannot file due to non-disclosure requirements, would provide the FCC a more accurate view of the BOCs' performance.

- Second, it is unclear how the BOCs derived the "ILEC Average" listed in their presentation.
- Third, the "improvement" shown is based on a relatively low baseline. Performance remains unacceptably poor.
 - Several carriers have filed complaints regarding incumbent LEC special access performance. For example, Time Warner Telecom filed a complaint against BellSouth; MCI filed a complaint against U S WEST; Cable & Wireless filed a complaint against Verizon; Focal filed a complaint at the New York Commission against Verizon; U.S. Telepacific filed a complaint against Verizon with the California Commission; and AT&T filed a series of complaints against U S WEST with various state commissions, including Colorado, Minnesota and others.
 - The FCC's Enforcement Bureau has advised several carriers that without the establishment of objective measurements and standards, competitors will have great difficulty demonstrating that incumbent LEC performance is unjustly or unreasonably poor.
 - Incumbent LECs impose non-disclosure provisions on the reports they provide competing carriers, prohibiting carriers from using the incumbent LECs' reports in any regulatory or court proceeding. Moreover, the business rules and reporting provided are not consistent among the incumbent LECs, making it exceedingly difficult to demonstrate effectively that a particular incumbent LEC's performance was unreasonable.

BOCs' claim: Negotiation can accomplish the policy goals of a performance assurance plan and is a better tool to address the diverse needs of the special access marketplace.

JCIG's response: JCIG represents the diverse special access marketplace. Members of JCIG include end users, wireless carriers and competitive wireline carriers. All of the JCIG members agree that years of escalations and negotiations

have been wholly ineffective in improving incumbent LEC special access performance. In addition, negotiation imposes disproportionate burdens on smaller customers that have fewer resources to devote to negotiations and considerably less leverage at the negotiating table than larger customers. Customers should be able to purchase service out of the incumbent LECs' tariffs and have some assurance of reasonable service.

Service providers with 90-95% of the market have no incentive to negotiate. Given the incumbent LECs' market shares, even the largest customers often have no alternative sources of special access services. Meaningful negotiations cannot occur when one party has all of the negotiating leverage.

BOCs' claim: The performance measurements and standards proposed by JCIG are burdensome, unrealistic, unachievable, overly complex, subject to manipulation, and unjustified.

JCIG's response: Adopting the JCIG proposal would simplify, not complicate, the current situation. Under JCIG's proposal all customers would be entitled to uniform reporting. Today, many customers do not receive reports at all. And even those customers that are able to obtain reporting must deal with different business rules and measurements on a state-by-state, incumbent-LEC-by-incumbent-LEC basis. Moreover, BellSouth is already reporting against JCIG metrics in Florida and Georgia.

BOCs' claim: BOCs currently report on key measures, both in the aggregate and for specific customers, including certain JCIG members.

JCIG's response: ARMIS reports are severely deficient in both quality and scope, as detailed above. The data available pursuant to section 272 also suffer from several flaws. For example: there is no uniformity of reporting; there are no well-defined business rules; the sample sizes for incumbent LEC affiliates are very small; and the data is not timely – reports are biennial, releases are often delayed by months, and subject to disputes about confidentiality. In addition, while some JCIG members are able to obtain monthly performance reports, many members do not, and this discrepancy exists even between customers served by the same incumbent LEC. Moreover, many of the reports that JCIG members receive fail to provide sufficient information to allow customers to analyze key indicators with respect to performance and may not reveal discriminatory treatment.

BOCs' claim: Self-effectuating penalties, fines and forfeitures are unlawful.

JCIG's response: JCIG has not proposed self-effectuating penalties, fines or forfeitures. The forfeiture and complaint processes proposed by JCIG provide opportunities for the incumbent LECs to respond to any complaints or Notices of Apparent Liability. JCIG has also proposed that incumbent LEC tariffs and

contracts include service credits. As the BOCs have noted, service credits are incorporated in some BOC tariffs today. These service credits are far from uniform, however, and generally are far too small to provide sufficient incentives to drive incumbent LECs to improve special access performance.

BOCs' claim: This proceeding should be closed without any further action.

JCIG's response: JCIG's proposal for measurements, standards and reporting is backed by end users, wireless carriers, competitive LECs and long distance companies – in short, everyone but the incumbent LECs. The market for interstate special access is not competitive. JCIG's proposal is designed to achieve results similar to what could reasonably be expected in a competitive market. Adoption of the JCIG proposal is essential to ensuring that JCIG members, such as CMRS providers, can offer services in competition with incumbent LECs. The JCIG proposal would benefit end users by ensuring that they can receive high-quality special access services on a timely basis from a wide range of carriers.