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April 20, 2004

Via Electronic Filing

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

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

Dear Ms. Dortch:

On April 20, 2004, the Joint Competitive Industry Group ("JCIG") provided the attached *ex parte* letter to Chairman Powell and Commissioners Abernathy, Adelstein, Copps and Martin.

Pursuant to section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b), a copy of this letter is being provided to you for inclusion in the record of the above-referenced proceeding.

Sincerely,



Gil M. Strobel

Attachment

cc: Scott Bergmann
Michelle Carey
Daniel Gonzalez
William F. Maher
Julie Veach

Matthew Brill
Jeffrey Carlisle
Christopher Libertelli
Jessica Rosenworcel

April 20, 2004

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

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

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

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

Commissioner Jonathan Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

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

Dear Chairman Powell and Commissioners Abernathy, Adelstein, Copps and Martin:

The Joint Competitive Industry Group (“JCIG”) applauds the Commission’s recent commitment to expeditious resolution of the *Special Access Metrics Proceeding*.¹ We particularly welcome the Commission’s explicit recognition of the close relationship between that proceeding and other pending rulemakings, such as the *OI&M Proceeding*, making the prompt completion of the *Special Access Metrics Proceeding* an important priority for the Commission. JCIG continues to believe that the Commission’s adoption of the special access measurements, standards, reporting requirements and enforcement plan that JCIG has proposed in the *Special Access Metrics Proceeding* is the most efficient and effective way to ensure that incumbent local exchange carriers (“LECs”) provide all of their special access customers nationwide with just, reasonable and nondiscriminatory service, and that competitive carriers are

¹ *Section 272(b)(1)’s “Operate Independently” Requirement for Section 272 Affiliates*, Report and Order, WC Docket No. 03-228, 19 FCC Rcd 5102, ¶ 24 (FCC 04-54) (March 17, 2004) (“*OI&M Order*”) (acknowledging the relationship between the Commission’s decision in the *OI&M* proceeding and the outstanding Notice of Proposed Rulemaking on special access performance metrics, and committing to address special access performance metrics “expeditiously.”); *Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, CC Docket No. 01-321, 16 FCC Rcd 20896 (Nov. 19, 2001) (“*Special Access Metrics Proceeding*”).

protected against anticompetitive conduct by incumbents that continue to possess market power in the provision of those services.²

The *Special Access Metrics Proceeding* is also closely interrelated with the ongoing *Section 272 Safeguards Proceeding*³ and the *Broadband Dominance/Non-Dominance Proceeding*.⁴ As JCIG has explained in previous filings, incumbent LEC special access services are a key input in the competitive provision of the frame relay and ATM services that are the subject of the *Section 272 Safeguards Proceeding* and the *Broadband Dominance/Non-Dominance Proceeding*. Competitive carriers will not be able to offer frame relay and ATM services in competition with their suppliers – the incumbent LECs – without timely, non-discriminatory provisioning of special access. Consequently, to the extent that Commission proposals to relax or streamline regulation in the *Section 272 Safeguards* and the *Broadband Dominance/Non-Dominance* proceedings are predicated on the existence of robustly competitive retail markets for in-region interLATA and broadband services to enterprise customers, the adoption and implementation of the JCIG proposal are an essential safeguard for ensuring that precondition is satisfied. The Commission, therefore, should bring the *Special Access Metrics Proceeding* to a prompt conclusion and adopt the JCIG proposal before it considers the substantive issues presented in either the *Section 272 Safeguards* or the *Broadband Dominance/Non-Dominance* proceedings.⁵

² See, e.g., Attachment A to letter from JCIG to Michael Powell, Chairman, FCC, attached to letter from A. Richard Metzger, Jr. to Magalie Roman Salas, FCC (Jan. 22, 2002) and letter from JCIG to Chairman Powell, attached to letter from A. Richard Metzger, Jr. to William Caton, FCC (Feb. 12, 2002), filed in CC Docket No. 01-321. The Joint Competitive Industry Group is composed of competitive local exchange carriers, long distance carriers, CMRS providers, and end user customers, all of whom support a unified set of measures, standards, and reporting requirements, as well as an enforcement plan. JCIG's membership includes: the American Petroleum Institute (API), the Association for Local Telecommunications Services (ALTS), the Competitive Telecommunications Association (CompTel), the eCommerce & Telecommunications Users Group (eTUG), AT&T, British Telecom North America, Focal Communications Corporation, Global Crossing, Ltd., MCI, Nextel Communications, Inc., NewSouth Communications, T-Mobile USA, Inc., and XO Communications, Inc.

³ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, Further Notice of Proposed Rulemaking, WC Docket No. 02-112, 18 FCC Rcd 10914 (May 19, 2003).

⁴ *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, CC Docket No. 01-337, 16 FCC Rcd 22745 (Dec. 20, 2001).

⁵ Letter from JCIG to William Maher, Chief, Wireline Competition Bureau, filed in CC Docket No. 01-321 (Sept. 8, 2003).

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JCIG fully concurs that special access performance metrics are an important priority for the FCC's competition agenda, and looks forward to a rapid resolution of the *Special Access Metrics Proceeding* in accordance with the Commission's commitment in the *OI&M Order*.

Respectfully submitted,

The Joint Competitive Industry Group