April 22, 2005

BY ELECTRONIC FILING

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

Re: *Ex Parte Presentation*
CC Docket Nos. 01-321 and 96-149, and WC Docket No. 02-112

Dear Ms. Dortch:

In November, 2001, the Commission issued a Notice of Proposed Rulemaking ("NPRM") seeking comment regarding whether the adoption of measurements and standards for special access services would assist the Commission in ensuring that incumbent local exchange carriers ("LECs") provision special access services in a just, reasonable, and nondiscriminatory manner.[1] In response to the NPRM, a group representing a wide range of competitive carriers and end users banded together to form the Joint Competitive Industry Group ("JCIG") and formulate a concise set of performance measures, standards, and reporting requirements designed to induce proper provisioning and deter discrimination by the incumbent LECs.[2] Today, JCIG includes key representatives of every telecommunications segment other than incumbent LECs. JCIG's members include competitive LECs, interexchange carriers, wireless carriers and end users. All of JCIG's members remain unified in their belief that the FCC should adopt a set of metrics, standards, and enforcement mechanisms designed to address the incumbent LECs' poor performance and ensure compliance with sections 201, 202, and 272 of the Communications Act.

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[1] *Performance Measurements and Standards for Interstate Special Access Services*, Notice of Proposed Rulemaking, CC Docket No. 01-321, 16 FCC Rcd 20896, ¶ 1 (2001) ("NPRM"). In March 2004, the FCC reiterated the need to resolve the issues raised in the 2001 NPRM and committed to address special access performance metrics "expeditiously." *See Section 271(b)(1)'s "Operate Independently" Requirement for Section 271 Affiliates*, Report and Order, WC Docket No. 03-228, 19 FCC Rcd 5102, ¶ 24 (2004).

[2] *See* letter from A. R. Metzger to M. Salas, CC Docket No. 01-321 (Jan. 22, 2002) (attaching "Joint Competitive Industry Group ['JCIG'] Proposal, ILEC Performance Measurements & Standards in the Ordering, Provisioning, and Maintenance & Repair of Special Access Service") (included as part of the attached appendix of key JCIG filings ("App.") at Tab 1). (Unless otherwise noted, all *ex parte* letters cited herein were filed in CC Docket No. 01-321.)

The incumbent LECs' initial response to JCIG's proposal was simply to deny the need for metrics and claim that JCIG's proposal was unreasonably burdensome.[3] More recently, the Bell Operating Companies ("BOCs") began filing their own proposals. Although these proposals fell far short of the mark,[4] JCIG attempted to find a middle ground by filing a revised set of measurements that were even more streamlined than those in its original proposal.[5] In December 2004, more than three years after the FCC launched this proceeding, the BOCs finally filed a unified proposal of their own.[6] This joint proposal, like the individual proposals on which it is based, fails to address many of the key issues that continue to concern JCIG, however. These concerns include defects relating to standards and reporting, as well as problems with business rules and with the proposed measurements themselves.

Standards

The BOCs' proposal does not establish meaningful standards. While the JCIG proposal included both benchmark and parity standards, the BOC proposal does not include any objective benchmark standards and the parity standard is virtually meaningless.

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[3] The Bell Operating Companies' ("BOCs") claims have been disproved as state commissions have adopted either the JCIG metrics, or metrics that are substantially similar to those proposed by JCIG. *See, e.g.*, letter from G. Strobel to M. Dortch (June 7, 2004) (updating FCC staff regarding the status of state actions requiring measurement of incumbent local exchange carriers' ("LECs") special access performance); letter from G. Strobel to M. Dortch (Oct. 27, 2003) (attaching letter from JCIG to M. Carey) (providing notice that BellSouth had begun filing monthly reports summarizing its special access performance in Georgia) (App. Tab 7) ("JCIG Letter of Oct. 27, 2003"). In addition, BellSouth agreed to provide Time Warner Telecom reporting based on a set of measurements that are much closer to the original JCIG metrics than to the current BOC proposal. Letter from W. W. Jordan to M. Dortch (Aug. 26, 2002) (attaching "BellSouth/Time Warner Telecom Proposal"); *see also* letter from JCIG to M. Dortch (Sept. 26, 2002) (providing a detailed response to the BellSouth/Time Warner Telecom Proposal) (App. Tab 5).

[4] *See* letter from G. Strobel to M. Dortch (June 28, 2004) (attaching letter from JCIG to W. Maher) (App. Tab 9) ("JCIG Letter of June 28, 2004").

[5] Letter from JCIG to M. Dortch (Sept. 3, 2004) (App. Tab 10) ("JCIG Letter of Sept. 3, 2004").

[6] Letter from M. Henze, C. O'Connell, T. Hughes and D. May to J. Carlisle (Dec. 20, 2004) ("Joint BOC Letter") and attachment entitled "Joint BOC Section 272(e)(1) Performance Metrics Proposal" ("Joint BOC Proposal").

As JCIG has explained, objective benchmark standards are needed to ensure that all customers, including retail end users, are provided special access services in a just and reasonable manner, as required by section 201 of the Communications Act.[7] Parity standards do not ensure adequate performance. At best, parity standards ensure only that BOC retail customers and wholesale competitors receive the same performance, even if that performance is completely unacceptable. The reliance on parity standards in the absence of benchmark standards is therefore highly problematic.[8] This problem is exacerbated by the fact that the parity standard proposed by the BOCs is virtually meaningless. The BOCs propose that "the RBOC's performance in providing service to its non-affiliate carrier customers shall be *substantially similar* to that which it provides to its affiliates."[9] It is unclear whether this proposed standard includes comparisons to the service the BOCs provide their retail customers – a key component of any effective parity standard. Moreover, the BOCs have failed to define what constitutes "substantially similar" performance under their proposal.[10]

Reporting

The BOCs' proposal would not produce reporting data that are meaningfully disaggregated. As JCIG has explained, each BOC should be required to provide performance reports on a customer-specific basis to all its special access customers and to file public reports with the FCC on an aggregated basis for the following groups of customers: unaffiliated CMRS providers; affiliated CMRS providers; competitive wireline providers; affiliated wireline providers; and BOC end-user customers.[11] The BOCs propose to report on only two broad categories: affiliates and non-affiliates. The BOCs also have failed to define the relevant reporting period in their proposal. As JCIG

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7 *See* 47 U.S.C. § 201(b).

8 Parity standards are also unworkable for measures for which there are no retail analogues or for which there is an insufficient volume of activity.

9 *See* Joint BOC Proposal at 7 (emphasis added).

10 The BOCs also contend that the FCC should rely solely on the Section 272 Biennial audits and not consider any additional enforcement mechanisms. *See* Joint BOC Letter at 1. As JCIG has explained in previous filings, it is important that the FCC adopt effective enforcement mechanisms that ensure timely redress for poor performance and provide the BOCs with the proper incentives to offer their customers adequate service. *See, e.g.*, letter from A. R. Metzger to W. Caton (Feb. 12, 2002) (attaching letter from JCIG to Chairman Powell and "Essential Elements of a Special Access Provisioning Enforcement Plan") (App. Tab 2). At a minimum, failure to meet the applicable performance standards should constitute grounds for a complaint and recovery of damages pursuant to 47 U.S.C. §§ 206-208.

11 JCIG Letter of June 28, 2004 at 4.

has explained, to be useful, reporting must be provided on a monthly basis, and must not lag too far behind the performance being measured.[12]

Measures and Business Rules

The Joint BOC Proposal, like the individual proposals on which it is based, fails to capture the data needed for an effective performance assurance plan. Among its more obvious shortcomings, the BOCs' proposal fails to capture performance failures and other important data and fails to establish clear and meaningful business rules.[13] As with the individual BOC proposals, the joint proposal focuses only on those instances in which a BOC's performance meets expectations; it does not track what happens after a measurement is missed.[14] Similarly, the BOC proposal does not capture certain critical data, failing to measure information such as the length of time it takes to install service after a due date is missed, the number of circuits for which the due date has passed, or the magnitude of chronic failures.[15] Without these and other missing measurements, it will be nearly impossible to gauge the BOCs' performance accurately. Finally, the BOCs' proposal does not appear to provide special access customers with the data underlying their reports.[16] For the measurements to have any credibility, it is essential that the underlying data be subject to review and auditing, with appropriate protection of confidential material.

One problem common to all of the measures in the BOCs' proposal is the language permitting "[o]ther exclusions as defined by each RBOC to reflect system and operational differences."[17] This exclusion is likely to undermine the utility of all the measurements and to preclude easy comparisons across incumbent LECs. Experience demonstrates that all of the BOCs can (and do) conduct all of the proposed measurements and report them in a uniform fashion, regardless of differences in their internal systems. In any event, as JCIG has explained in previous filings, system differences among the BOCs should not drive or excuse output differences.[18] JCIG also objects to the BOCs' attempt to exclude GTE, SNET and other BOC affiliates from the proposed

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12 *See id.*

13 *See id.* at 5-6.

14 *See id.* at 5.

15 *See id.* at 5-6.

16 Although the BOCs state that they will retain the performance measurement data for at least one year, it is unclear whether this statement refers only to reports themselves, or extends to the underlying data. *See* Joint BOC Proposal at i.

17 *See, e.g., id.* at 2.

18 *See* JCIG Letter of Sept. 3, 2004, Attachment C at 3.

measurements.[19] The BOCs provide no rationale for this exclusion, and JCIG's experience is that the BOCs can and do provide measurements and reporting for services provided by affiliates such as GTE and SNET.

Comparison of BOC and JCIG Proposals

JCIG's proposal consists of a carefully designed package of key indicators aimed at allowing end-user customers to obtain the performance they need and the information they want. The JCIG proposal also is designed to ensure that incumbent LECs do not hamper competition by undermining competitive carriers' ability to provide timely and effective service to their end users. Each of the JCIG metrics serves an important business purpose.[20] Yet the BOCs' proposal excludes half of the ten metrics that JCIG included in its revised proposal. Furthermore, the five metrics proposed by the BOCs are so flawed that it is highly likely the resulting data would not be meaningful.

The BOCs provide little justification for their proposal's deviations from the JCIG proposal, claiming only that "[u]nlike other joint metrics proposals, the [BOCs'] Joint Proposal avoids measuring the same event multiple times and provides meaningful performance standards that are consistent with the statutory requirements of [section] 272(e)(1)."[21] As explained above, however, the BOCs' proposal does not provide "meaningful performance standards." In addition, in their apparent attempt to avoid "measuring the same event multiple times" the BOCs' proposal fails to capture much of the key data, such as repeat trouble report rates, that their customers need to run their businesses effectively. Moreover, the JCIG approach already has been proven to be a workable solution, as demonstrated by the fact that several state commissions have adopted either the JCIG proposal, or similar metrics, as a means of monitoring BOC performance.[22]

The chart below describes key differences between the revised JCIG proposal and the BOCs' proposal. In each case, JCIG provides an explanation for why the Commission should adopt the JCIG proposal.

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19 *See* Joint BOC Proposal at i, n.1.

20 Letter from R. Milkman to M. Dortch (June 18, 2002) (attaching "Joint Competitive Industry Group Origin of Metrics") (App. Tab 3).

21 Joint BOC Letter at 1.

22 *See, e.g.*, letter from G. Strobel to M. Dortch (attaching letter from JCIG to W. Maher) (Dec. 18, 2002) (notifying the FCC that the Georgia Public Service Commission adopted JCIG's proposed measures for use in Georgia).

Issue	JCIG Proposal	BOC Proposal	Reason FCC Should Accept JCIG Proposal
FOCT (Firm Order Confirmation Timeliness)			
Facilities check	Requires a minimum of an electronic facilities check prior to the return of a firm order confirmation ("FOC").[23]	Does not require any facilities check.	Without a facilities check, a FOC becomes merely an "acknowledgement of receipt" instead of a true "firm order confirmation." A facilities check is necessary if the FOC is to provide competitive carriers with the information they need to satisfy their customers.
Backlogs of access service requests ("ASRs")	Includes a "percent FOC completeness diagnostic."	Does not include any measure of the number of ASRs for which no response was provided.	A "FOC completeness" metric provides an "early warning system" that allows special access customers to determine when ASRs are not receiving responses before the problem becomes chronic or reaches unacceptably high levels. Without a "FOC completeness" metric, there will be no way to measure the backlog of ASRs that have not received responses.[24] It is important

[23] The firm order confirmation ("FOC") is an electronic transmission sent by the incumbent LEC in response to an access service request ("ASR"). Among other things, the FOC contains the due date specified by the BOC for the installation of requested facilities (the FOC Due Date). Competitive carriers rely on the FOC Due Date to notify their own end-user customers of the date on which the facilities will be installed and services will be turned on.

[24] *See* JCIG Letter of June 28, 2004 at 8, n.34 (explaining the importance of tracking past-due ASRs); *see also* JCIG Letter of Oct. 27, 2003 at 1-5.

Issue	JCIG Proposal	BOC Proposal	Reason FCC Should Accept JCIG Proposal
			that all ASRs receive a response, even if the response is late. Indeed, responses to past-due requests should be provided as close to the original FOC due date as possible. BellSouth included a percent FOC completeness diagnostic in its most recent proposal.[25]
Standard intervals	2 business days for DS0 and DS1 services. 5 business days for DS3 services.	Standard interval is "that which is specified in the company-specific ordering guide."	Carriers and end-user customers should be able to expect timely responses to service requests from all BOCs. The intervals provided in the JCIG proposal allow the incumbent LECs sufficient time to conduct a facilities check and ensure that the due date provided in the FOC is accurate.
Projects	Measured as a diagnostic.	Not measured.	A diagnostic comparing FOC completeness and FOC interval distribution for projects and non-projects provides a useful tool for ensuring that incumbent LECs provide FOCs for projects in a timely manner.

[25] "BellSouth Service Quality Measurement Plan" at 2, attached to letter from K. Levitz to M. Dortch (Nov. 14, 2003).

Issue	JCIG Proposal	BOC Proposal	Reason FCC Should Accept JCIG Proposal
OVRD (Offered Versus Requested Due Date)			
Omitted from BOC proposal	Measures the difference between the due date provided on the FOC and the customer requested due date, when the due date requested is equal to or greater than the standard interval specified by the LEC.	Does not include any measure comparing the offered due date to the requested due date.	Competitive carriers must have a high degree of confidence that the incumbent LECs will agree to the due dates that carriers negotiate with their end-user customers. If the incumbent LEC does not confirm the requested due date, for the vast majority of ASRs, it can harm the competitive carrier's reputation, making the carrier appear inefficient or disorganized.
PIAM (Percent Installation Appointments Met)			
Customer not ready ("CNR") situations	Includes a diagnostic measuring percent installation appointments met without CNR consideration.	Does not include any measure of CNR situations.	A diagnostic measuring CNRs would benefit both the BOCs and their customers by helping both parties better understand the causes of missed appointments.
Multiple missed appointments	An appointment that is missed after an initial CNR is counted as a missed appointment, unless it also is caused by a CNR.	Where there are multiple missed appointment codes, each BOC will determine whether an order is considered missed.	Although the BOCs should not be held accountable for missed appointments caused by verifiable CNR situations, CNRs should not excuse subsequent missed appointments for which the customer was not at fault.

Issue	JCIG Proposal	BOC Proposal	Reason FCC Should Accept JCIG Proposal
MADL (Missed Appointments Average Days Late)			
Omitted from BOC proposal	Measures the magnitude of delays for appointments not completed on or before the FOC due date.	Does not track activity that occurs after an initial appointment is missed.	It is critically important to measure how quickly the BOCs act after an appointment has been missed. End-user customers expect that when a due date is missed, every effort will be made to have the service installed as promptly as possible. Each day that an installation is delayed can result in lost revenue or business for end-user customers. Measuring the magnitude of delays helps ensure that the BOCs will assign past-due circuits the same priority as other circuits for which the FOC due date has not yet passed.
AIOI (Average Intervals – Offered vs. Installed)			
Omitted from BOC proposal	Measures the difference between the average offered interval and the average installation interval.	Provides no comparison of offered intervals versus actual installation intervals.	Measuring the offered and installation intervals provides a valuable look at the overall level of service being provided by the BOCs, measuring two key aspects of provisioning: what is being offered by the incumbent LECs and how long it takes to have service installed. Without this measurement, incumbent LEC customers have no way of knowing the magnitude of

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			increases in provisioning intervals (*i.e.*, deterioration in incumbent LEC service) over time.
PPDO (Percent Past Due Orders)			
Omitted from BOC proposal	Measures the percentage of orders that have not been completed more than 5 business days after the FOC due date.	Does not measure what happens to an order after the initial due date is missed.	Past due orders can escalate rapidly into a major problem. Quality customer service dictates that when a carrier misses an installation due date it will reschedule immediately. Measuring the magnitude and frequency of delays helps ensure that past due circuits are installed as expeditiously as possible.
NITR (New Installation Trouble Report Rate)			
No Trouble Found ("NTF") and Test OK ("TOK")	Includes NTF and TOK in trouble report count.	Excludes NTF and TOK in trouble report count.	It is important to track NTF and TOK as a means of identifying circuits that experience intermittent failures, and resolving problems with those circuits.
Repeat troubles	Counts each customer-initiated trouble report as a separate trouble report.	Counts only the first customer direct trouble report.	Excluding repeat troubles would limit the ability to measure the quality of the circuit installed, the quality of repair service being performed on new circuits, and, ultimately, the level of customer dissatisfaction. Omitting repeat troubles

Issue	JCIG Proposal	BOC Proposal	Reason FCC Should Accept JCIG Proposal
			would remove a significant set of data that is essential to measuring installation quality and new circuit quality, and would produce misleading and incomplete results.[26] The fact that a circuit has already had a trouble does not in any way lessen the importance of additional problems with the same circuit. The total number of troubles is an important indicator of the quality of the new circuit.
Circuits vs. orders	Measures NITR based on circuits.	Measures NITR based on "circuits or orders."	Troubles occur on a circuit, not on an order.
CTRR (Failure Rate/Trouble Report Rate)			
No Trouble Found ("NTF") and Test OK ("TOK")	Includes NTF and TOK.	Excludes NTF and TOK.	It is important to track NTF and TOK as a means of identifying circuits that experience intermittent failures, and resolving problems with those circuits.

[26] For example, if repeat troubles were excluded, an incumbent LEC that installed 1,000 new circuits, 10 of which generated 3 troubles each, would appear to be performing just as well as an incumbent LEC that installed 1,000 new circuits, 10 of which generated a single trouble. However, the actual customer impact would be very different under the two scenarios, as the harm to the ordering carrier's reputation would be much greater in the first instance, in which each circuit experienced multiple troubles, than in the second instance, in which each circuit generated only a single trouble.

Issue	JCIG Proposal	BOC Proposal	Reason FCC Should Accept JCIG Proposal
Circuits in service during the reporting period	Calculates the trouble report rate by dividing the number of trouble reports completed during the reporting period by the total number of circuits in service at the end of the reporting period.	Calculates the trouble report rate by dividing the number of trouble reports "handled during the reporting period by the total number of in-service circuits for the same period."	It is unclear whether the "total number of in-service circuits" for the reporting period refers to the number of circuits in service at the beginning of the reporting period, at the end of the reporting period, or some other time frame.
MAD (Average Repair Interval)			
No Trouble Found ("NTF") and Test OK ("TOK")	Includes NTF and TOK.	Excludes NTF and TOK.	For the sake of consistency, the BOCs should include NTF/TOK in all relevant metrics. A diagnostic showing the breakout of NTF/TOK troubles provides visibility into an area that could be of concern to the BOCs as well as JCIG.[27]
Unit of measurement	Measures the repair interval in hours.	Measures the repair interval in "hours/days."	Repairs should be made in hours, not days. In addition, reporting should be uniform for all BOCs, so each BOC should be required to use the same unit of time to measure the applicable interval.

[27] Including No Trouble Found ("NTF") and Test OK ("TOK") in this metric may benefit the BOCs by potentially lowering the average repair interval.

Issue	JCIG Proposal	BOC Proposal	Reason FCC Should Accept JCIG Proposal
RTRR (Repeat Trouble Report Rate)			
Omitted from BOC proposal	Measures the percent of maintenance troubles resolved during the reporting period that had a prior trouble ticket closed within the 30 calendar days preceding the creation date of the current trouble report.	Does not measure repeat troubles.	Multiple circuit troubles or outages within a short time period result in significant dissatisfaction by end-user customers and can harm a competitive carrier's reputation in the market.[28] Without this metric, there will be no measure of the quality of the repair work performed by the incumbent LECs, or of chronic maintenance problems that frustrate end users.

[28] *See* JCIG Letter of Oct. 27, 2003 at 2.

Conclusion

As the discussion above demonstrates, the BOCs' proposal fails to provide the information needed to measure the BOCs' special access performance accurately and assess whether they are providing reasonable and nondiscriminatory service to their retail and wholesale customers. The Commission therefore should reject the BOCs' proposal and instead adopt the revised JCIG metrics. These metrics are targeted to gather the key data needed to induce satisfactory performance. Moreover, the JCIG metrics have been endorsed by representatives of every telecommunications segment other than incumbent LECs. JCIG therefore renews its request that the Commission adopt the JCIG metrics as expeditiously as possible and bring to a close this long-running proceeding.

In accordance with the Commission's rules, this letter and the accompanying attachments are being provided to you for inclusion in the public record of the above-referenced proceedings.

Respectfully submitted,

The Joint Competitive Industry Group

Attachments

cc: Pam Arluk
Scott Bergmann
Michelle Carey
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