**STATEMENT OF ROYCE J. HOLLAND**

**CHAIRMAN AND CEO OF ALLEGIANCE TELECOM, INC.**

**HEARING ON STATE OF LOCAL COMPETITION**

**BEFORE THE SENATE COMMITTEE ON COMMERCE,**

**SCIENCE AND TRANSPORTATION**

**JUNE 19, 2001**

Mr. Chairman and Members of the Committee, I am Royce J. Holland, Chairman and Chief Executive Officer of Allegiance Telecom, Inc. Allegiance is a facilities-based, competitive local exchange carrier (CLEC) headquartered in Dallas, Texas that offers the small and medium sized enterprise (SME) market a complete package of telecommunications services, including local, long distance, international calling, high-speed data transmission and advanced Internet services including high speed dedicated access, web hosting, virtual corporate intranets, and an E-commerce platform.

I appreciate this opportunity to testify before the Committee. I wish to address three of the most important issues facing my industry: fulfillment of the pro-competitive intent of the Telecommunications Act of 1996, effective enforcement of Congress' mandate to open telecommunications markets to competition, and national performance standards for incumbent local exchange carriers (ILECs).

Before I do so, let me provide the Committee with some background about Allegiance. Since its founding in 1997, Allegiance has expanded its operations to serve 32 markets across the country with almost 4,000 employees. We had revenues of $285 million in 2000, an increase of 188% over the prior year. And we expect to double that revenue again this year with projected revenue of approximately $550 million.

Allegiance has designed our networks using a "smart build" approach. We use a combination of our own network facilities, unbundled network elements leased from the incumbent telephone companies and, where it is available, fiber leased from third parties to provide service to small and medium sized businesses. To date we have installed more than

730,000 lines, approximately 90% of which are "on switch." We have collocated in 636 incumbent local exchange carrier central offices across the nation, and when we add four more markets this year we will complete our current fully-funded 36 market business plan.

Prior to co-founding Allegiance, I was President and co-founder of MFS Communications Co., one of the pioneers in the competitive local telephone industry even before the passage of the Telecommunications Act of 1996. MFS grew from a privately held start-up operation to one of the Nasdaq 100 Index companies serving 52 markets in North America, Europe and Asia, with annual revenue of about $1 billion. At the time the Telecom Act was debated and passed, MFS was the leading competitive entrant in the local telecommunications market. MFS was purchased by WorldCom in 1996.

**COMPETITION PRE-1996 TELECOM ACT**

Six years ago, in my capacity as President and Chief Operating Officer of MFS Communications, I testified before the Senate Judiciary Committee and the House Telecommunications and Finance Subcommittee regarding the bills that were then pending that were ultimately enacted as the Telecommunications Act of 1996. I know what we went through then to get the bill passed, and I know what was at stake. We knew then that the Telecom Act was about transition – transition from regulated telephone monopolies to full-blown competition in the local exchange market. We knew that local competition would not happen overnight, but with the right conditions and legal requirements, market forces would break through the stone walls of the monopolies to allow competition to take root and flourish.

As you know, MFS was providing local exchange services in competition with the ILECs before passage of the Telecom Act. We knew first-hand what it was like to deal with entrenched monopolists that controlled bottleneck facilities. Before the Telecom Act, one of our goals was simply to be able to connect our network facilities with those of the incumbents so that our customers could make calls to their customers. This so-called "interconnection" of competing local networks was a radical departure from the past, and the Bell companies, most notably, were extremely reluctant to concede one inch of ground to upstart competitors like MFS. We knew that the Bell companies would not voluntarily do anything to help their competitors succeed, and they would resist legal requirements for network access every step of the way.

We knew the experiences of the Judge Greene court and the antitrust proceeding that broke up the old Bell System. We knew how hawkish oversight of monopolies in transition to competition was essential if competition in the long-distance market was to take hold. If competitors to AT&T's monopoly over long distance services were ever to succeed, they needed conditions that would provide them, at a minimum, a level playing field with AT&T.

We knew how the Bell companies, dating back to the first decades of the century, would drive small telephone companies out of business simply by denying them the ability to connect their networks to the Bell network. Once those small companies failed, the Bell companies would seize their customers, seize their markets, and expand the Bell company's own monopoly power.

More recently, we knew how at least one Bell company would charge MFS more than $100,000 for a 10-foot by 10-foot chain link enclosure to keep our equipment separate from its equipment in the Bell central office. Somehow those same exorbitant real estate rates were never reflected in the rates that the Bell companies charged their own customers. As a result, we knew that network elements and colocation had to be made available to competitors at cost – the Bell companies should have no pricing advantage simply because they were entrenched as incumbent carriers. The most critical element that competitors needed from the incumbent – access to the local loop – had to be provided at cost, on commercially viable terms, and within time frames that the Bell company provided to itself. Unless competitors had a level playing field, unless we could compete with the Bells on the same terms that the Bell companies provided service to itself, there would be little hope for true competition.

In 1995, we tried to impress upon Congress the need for clear, strong language that would compel the Bell companies to open their markets to competitors. We attempted to impress upon you that the monopolist must be treated differently. With its market power and control over essential facilities, an incumbent that merely failed to be responsive to the requests of competitors could kill competition as readily as with overt anticompetitive practices. The monopolist must be told in unambiguous language what it must do, when it must do it, and what would happen if it didn't do it. I testified in the Senate and the House that strong and effective follow-up enforcement and compliance provisions were needed in addition to a competitive checklist. As I said then, the competitive checklist approach alone would be like having a law which says that every car must contain an engine, four wheels, a transmission, brakes, and headlights, but does not require that these parts together enable the car to drive off the dealer's lot, let alone for a prescribed warranty period or shakedown cruise. I said we wanted a car that runs!

MFS's success proved that Congress created a car that runs. I left MFS after it was acquired by WorldCom and started up Allegiance with the view that the new markets created by the Telecom Act could support more competitors to the Bell companies. The car that is the competitive market certainly runs, but it could run better. While the Telecom Act began the transition to competitive markets, Congress and the FCC must make sure that the transition process is completed.

**COMPETITION AS ENVISIONED BY THE 1996 TELECOM ACT**

There has been a lot of frustration expressed over the slow development of local competition since the enactment of the Telecom Act. I share that frustration. But I think the blame is misdirected. It's important to review for a moment the framework of the 1996 Telecom Act in light of the 100-year head start enjoyed by the Bell companies. It is important to also note that the Telecom Act was about bringing competition to two markets that had no competitive choice: the small business market and the residential market. Prior to 1996, companies like MFS, were able to offer some level of competitive choice for the large corporate users. But Congress wisely recognized that facilities-based competition to the RBOCs could not occur overnight. Congress also wisely did not mandate a generic, industry-wide business plan. Instead, the Act provided for three methods of competitive entry and relied on market forces to decide where and how that competition would emerge.

In essence, the 1996 Act envisioned competitive entry under three scenarios: 1) resale; 2) a combination of facilities and unbundled network elements; and 3) pure facilities-based entry. The only economically feasible entry method to serve the small business market and residential market is by the first two entry methods. The only long term economically feasible way to serve these markets is by a combination of network facilities and unbundled network elements, most importantly, the local loop. The pure facilities-based entry method is only viable for cable TV companies serving the residential market and for CLECs serving only the large corporate market. Since Allegiance Telecom specializes in serving the small and medium-sized business market, we based our entry on a combination of our own facilities and unbundled network elements that we lease from the ILEC.

Entry to a new market requires extensive planning and can be extremely time consuming. Let me outline the steps that Allegiance takes before it is prepared to begin service to customers in new markets. As you will see, any additional delay imposed by ILEC recalcitrance makes a difficult process even more arduous.

- ❖ First, Allegiance must file for and obtain authorization to provide local, intraLATA toll and long distance service from the State Public Utility Commission.

- Second, Allegiance must negotiate interconnection agreements with the incumbent LECs. If negotiations are unsuccessful, Allegiance must file an arbitration petition with the State Public Utility Commission to establish interconnection terms and conditions. An arbitration takes up to nine months and can easily cost a hundred thousand dollars.
- Third, Allegiance must design the network and order the switch.
- Fourth, Allegiance must secure real estate for its switch site and sales office.
- Fifth, Allegiance must select the ILEC central offices where Allegiance needs to be colocated to serve customers, and then submit applications to the ILEC for colocation space. Colocation is essential because Allegiance uses the local loop unbundled network element provided by the ILEC, and Allegiance must have physical access to the local loop in the ILEC central office.
- Sixth, Allegiance must contact city and county Public Safety Administration Point (PSAP) jurisdictions for purposes of negotiating agreements and completing other tasks necessary to obtain authorization to provide 911 service.
- Seventh, Allegiance must apply to the North American Numbering Plan Administration for blocks of telephone numbers.
- Eighth, Allegiance must place orders with the ILEC for interconnection trunks, 911 trunks and operator services/directory assistance trunks.
- Ninth, Allegiance must order and install colocation equipment.
- Finally, Allegiance must update the Local Exchange Routing Guide (LERG) with our company-specific information. The LERG is an industry database of carrier codes and

routing information so that other carriers know how to route calls to and from Allegiance customers in the new market.

While Allegiance certainly analyzes the market for the likelihood of successful market entry before initiating the process, and solicits customers during the process, we still enter new markets without any guarantees that we will establish a customer base sufficient to justify the significant investment needed to provide service. As the above list illustrates, the risk associated with new market entry strongly depends on ILEC conduct and whether the ILEC provides essential services and facilities that Allegiance needs in a timely manner.

I am proud to say that the success of Allegiance's business model validates the foresight of the 1996 Act every day. And as our performance continues to improve every quarter – which it does – the benefits of the 1996 Act will continue to grow as well. Now is not the time to abandon those principles of competition, or the unbundled loop approach that makes our business possible. Instead, Congress and the FCC should ensure that CLECs can depend on ILEC compliance with the duties placed on them by the 1996 Act.

**COMPETITION POST-1996 TELECOM ACT**

The Telecom Act was one of the greatest pieces of commercial legislation of the last thirty years. For the first time in any of our lifetimes, it offered consumers the promise of a choice of local telephone service providers. No one expected that competitors would find it easy trying to break the monopoly strongholds controlled by the Regional Bell Operating Companies (RBOCs) and GTE. Nonetheless, five years after you so astutely determined that developments in technology and the public interest demanded that the government sanctioned protection for local telephone monopolies should be lifted, competitors have been able to capture a mere 8% of local telephone lines. In the residential market and small business market, the disparity is even greater – the RBOCs alone control over 140 million lines while CLECs have 8 million lines.

At the same time, the RBOCs and GTE have joined forces to increase their size and domination of the nation's local telephone market, with the former Bell Atlantic acquiring New York Telephone, New England Telephone and GTE to become the behemoth Verizon; and Southwestern Bell acquiring Pacific Telesis, Nevada Bell, Southern New England Telephone, and Ameritech. While Congress concluded that it would only be fair to open the long distance market to the RBOCs once they had opened their local markets to competitors and for that reason overrode the MFJ and Judge Greene's oversight of the RBOCs, an unfortunate by-product of life without the MFJ has been the concentration of control of the nation's local telephone market in the hands of 4 megamonopolies, rather than the 8 that dominated the market in 1996. What this means for CLECs is that the Goliaths they must battle for both customers and network access have grown bigger, more powerful and more cocky about using their market power to keep their competitors at bay.

Take Verizon as an example. According to its Year 2000 Annual Report, the Verizon companies are the largest providers of wireline communications in the United States with nearly 109 million access lines in 67 of the top 100 US markets and 9 of the top 10. Verizon serves one-third of the nation's households, more than one-third of Fortune 500 company headquarters and the Federal Government. Verizon has proudly trumpeted to Wall Street that it lost 29% fewer lines to competitors in the second half of 2000 than it did in the first half of the year. Statistics like these demonstrate that further deregulation of the RBOCs is not appropriate, and indeed would be extremely detrimental to the struggling competitive industry, at this time. The increase in concentration of control of the nation's local access lines since the passage of the 1996 Act means that more, not less, regulatory enforcement is needed if the pro-competitive goals of the Act are to be realized.

In order to provide service to customers, CLECs need access to the networks and facilities of the incumbents, especially to the unbundled loops connecting customers to the network (also known as the last mile) and colocation space in the incumbents' central offices. In passing the Act, Congress recognized that competitors could not duplicate the ubiquitous facilities of the incumbents overnight and indeed that in most instances, the last mile could never be duplicated for the small business market and residential mass markets. Sections 251 and 252 provide CLECs with access to the interconnection, unbundled network elements, colocation and wholesale pricing that we need to get into the local telephone market, but the rights afforded by the Act are ephemeral unless they can be expeditiously enforced without expensive and drawn out litigation. Although CLECs are big customers of the RBOCs as purchasers of interconnection trunks, colocation and UNEs, CLECs use those tools to compete for the same end users as the RBOCs. This inherent conflict between their roles as suppliers and competitors significantly diminishes the incentive the RBOCs have to open their markets.

To help ensure that local telephone competition becomes a reality for all American consumers, Congress must give the FCC the resources to implement a regulatory scheme that has certainty and an enforcement program that has teeth.

**COMPETITION NEEDS STRONGER FCC ENFORCEMENT**

The need for stepped-up enforcement is shown by the relative ineffectiveness of the major enforcement actions over the last year that the FCC took against RBOCs for flouting their local competitive obligations. By far the largest of these actions concluded nearly a year ago when GTE agreed to pay $2.7 million for openly flouting the collocation provisioning standards. In another proceeding, the FCC fined BellSouth for refusing to provide Covad with cost justification and other information in an interconnection proceeding. This conduct, the FCC found, constituted a breach of BellSouth's legal obligation under Section 251 to negotiate in good faith with requesting CLECs. The FCC, nonetheless, found that BellSouth's intransigence, which stymied competitive entry into the multi-billion dollar high speed services market, warranted a fine of $750,000, approximately one-half of the amount that the FCC could have assessed.

In December 2000, as finalized this past March, SBC was found to have "willfully" and repeatedly violated the service quality reporting obligations imposed by the FCC as a condition of the SBC-Ameritech merger. Specifically, SBC overstated the quality of service provided to CLECs for such important performance measures as timely Firm Order Confirmations, OSS order flow-through, the number and duration of provisioning delays, and the number of trouble reports. Most troubling, this data was used by the Oklahoma and Kansas Commissions as part of the basis for their respective endorsements of SBC's section 271 applications in those states. The FCC Enforcement Bureau assessed a woefully inadequate fine of only $88,000.

Similarly, this past January, the FCC Enforcement Bureau issued a Notice of Apparent Liability finding that SBC failed to comply with the FCC's collocation notice requirements. The consequences that SBC faces, however, are fairly trivial. Despite the Enforcement Bureau's detection of "numerous" violations – each punishable by a forfeiture of up to $110,000 per day – the Bureau proposed a forfeiture amount of only $94,500.

Although I commend the willingness and the ability of the FCC to identify and sanction the BOCs' actions that threaten competition, the penalties imposed are trivial for these huge companies. These fines are plainly insufficient to deter the BOCs' illegal and anticompetitive conduct. Additional authority and direction from Congress that it intends the FCC to impose greater penalties should serve as encouragement to the FCC to take more aggressive action against future violations. Given the relative laxness of enforcement of violations of the Telecom Act, the RBOCs must view FCC enforcement as the better course than actually complying with their statutory obligations. Paying the fines and continuing to discriminate against competitors remains a smart business decision when one considers the competitive advantages to be gained by the RBOCs as a result. We appreciate Chairman Powell's recognition that CLECs have often "been stymied by practices of incumbent local exchange carriers that appear designed to slow the development of local competition" and applaud his request for increased forfeiture authority.[1] But more is necessary.

The Commission's enforcement authority must be increased significantly to the point where the fine would significantly impact the quarterly financial results of an RBOC or AT&T. The FCC should be specifically directed to assess the fine based on the revenues of the offender. We recommend that the maximum penalty be leveled at 1% of a company's quarterly revenues. Such penalties would impact the quarterly financial reports of the offending party.

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[1] May 4, 2001 letter from Chairman Michael K. Powell to the Members of the House and Senate Commerce and Appropriations Committees.

That is the only way to really focus the attention of the RBOC's CEO and senior management to change the culture of the RBOC to abide by the spirit and letter of the law. If the FCC penalties do not impact the financial success of the company, then there will be no change in the company's behavior in its compliance with the law.

The FCC should also be authorized to require that all or a portion of a forfeiture assessed for violations of the Act or the FCC's rules be paid to the carriers injured by the violations, rather than to the Treasury, in an amount sufficient to compensate them for the damages caused by the violations.

The FCC should also be encouraged by Congress to exercise its Cease and Desist Authority more readily. We have experienced several issues with RBOCs that we believe warrant Cease and Desist action. The RBOCs have the ability to thwart CLECs' efforts to attract and retain customers in a myriad of ways other than poor provisioning of the facilities needed to provide service. For example, one RBOC appeared to be engaged in a systematic attempt to thwart Allegiance's sales efforts by, among other things, calling our prospective customers after we submit orders to the RBOC to switch the customer's service to Allegiance and offering the customers a better deal if they cancel their orders with Allegiance. This campaign included the following specific actions:

- ❖ We learned from a customer who cancelled his order with Allegiance before his service had been switched from an RBOC that its representative called him shortly after he signed on with Allegiance and offered to match Allegiance's rates. Section 222(b) of the Act prohibits carriers that receive proprietary information from another carrier from using such information for their own marketing purposes. The only way this RBOC could have learned of the customer's impending cancellation of service was through the order Allegiance submitted to it to convert the customer's service. This was not an isolated incident. During the fourth quarter of 2000 and the first quarter of this year, more than 10% of the customers who had signed up for Allegiance service in two large states served by this RBOC cancelled their orders before their service was converted.

- We learned from another customer who called his RBOC to lift his PIC freeze so that he could switch his service to Allegiance that the RBOC's representative responded, "Are you sure you know what you are asking me to do? Let me fax you over a list of the problems Allegiance has caused and then you decide if you still want me to remove the freeze." The FCC has specifically determined that Section 222(b) prohibits a carrier executing a customer's request to change carriers from using such information to convince the customer not to make the switch. This has not stopped this particular RBOC.

Competition is clearly harmed where an RBOC exploits the advance notice of a customer's impending cancellation of service that it receives in its position as the underlying network facilities provider to market its own services and win the customer back. Such conduct is clearly prohibited by the Act. It is also not clear that carriers injured by such conduct have a private right of action for damages. To the extent that the FCC finds a carrier guilty of the misuse of carrier to carrier proprietary information and assesses a fine, it should be authorized to share a portion of that fine with the carrier injured by the violations.

Under the FCC's new slamming rules, carriers that receive allegations from customers that they have been slammed are required to notify the unauthorized carrier of the customers' allegations. All carriers are required to file a report with the FCC twice a year stating the number of slamming allegations made against them and whether the allegations were valid, as well as the number of slamming allegations they received against other carriers and the identity of those carriers. Since the notification rules have become effective, Allegiance has received a disproportionate number of slamming notifications from one RBOC in two of its service territory states. For example, during the week of April 23-27, 2001, 66% of the slamming notifications Allegiance received were generated by these RBOC subsidiaries. Almost every notification we have received from this RBOC bears the fax line of its General Business Services Win Back Group. The Win Back Group apparently takes a very liberal approach to the definition of a slam as we have learned when we contact the customers to investigate the slamming allegations and discover that a substantial majority are unfounded. This RBOC's Win Back Group seems to categorize any instance where a customer decides to return to it as a slam no matter what the circumstances. We have received slamming notifications on customers who have reported to us that they never told this RBOC they were slammed. We received one slamming notification from the same RBOC on a former customer who had called to complain about its bill ***from that RBOC.***

Allegiance takes slamming very seriously and immediately terminates any employee found to have engaged in slamming. Allegiance does not believe, however, that the FCC intended for carriers to classify any instance where a customer elects to go back to its former carrier as a slam. The apparent abuse of the RBOC described above of the FCC's slamming notification rules has caused Allegiance to devote considerable staff time and resources to investigating allegations that have no basis. We have no means to recoup these resources. Again, to the extent that the Commission could assess substantial fines against carriers for such abuses, and share a portion of those fines with the victimized CLECs, CLECs could be compensated for the damages they incur.

**PROVIDE THE FCC WITH ADDITIONAL RESOURCES TO ADJUDICATE COMPLAINTS**

Of course, it is easy for me to say that the FCC needs to do more to enforce the Telecom Act, but I know that it cannot do more unless it is given more resources. The threat of enforcement must be constant enough and the penalties for noncompliance must be high enough to effectively deter anticompetitive behavior. Congress should appropriate sufficient funds to enable the FCC to double the size of the Market Disputes Resolution Division of the Enforcement Bureau and to hire 25 special masters with relevant legal and industry experience to hear and adjudicate complaints between incumbents and competing carriers.

**FCC MUST ENFORCE SECTION 251**

Lax enforcement has encouraged a perception by some of the ILECs that compliance with Section 251 of the Act is somehow voluntary and only to be achieved in order to receive Section 271 authority to enter the inter-LATA market. The FCC has authority pursuant to Section 251 of the Act to resolve inter-carrier disputes and enforce interconnection agreements, statements of generally available terms and state tariff provisions that codify the RBOCs' obligations to provide interconnection, UNEs and colocation. While many state commissions have been vigilant in resolving interconnection disputes, the decisions have no precedential value outside of the state where the dispute was brought and the RBOCs often take the position that the decisions are applicable only to the parties to the dispute. For example, over the past several years, the Texas PUC has issued several decisions directing SBC to pay reciprocal compensation to CLECs. Despite these decisions, another RBOC has continued to resist its obligation to pay reciprocal compensation arguing that the PUC's rulings applied only to SBC. Even after the PUC issued a decision last fall specifically holding that the RBOC was subject to the same reciprocal compensation obligations as SBC, the RBOC has continued to withhold full payment of amounts owed to CLECs on the grounds that the decision applies only to the CLEC that brought the action.

The FCC has the authority to enforce compliance with section 251 and to decide interconnection disputes which would allow for the development of precedent that has nationwide applicability and would relieve CLECs of the financial burden of bringing multiple complaints against every RBOC in every state in which they operate. The substantial financial resources that are currently being diverted to litigating interconnection rights on a state by state basis could be far better spent by the CLECs on developing and expanding their networks.

**AUTHORIZE THE FCC TO REQUIRE PAYMENT PENDING THE RESOLUTION OF BILLING DISPUTES AND TO AWARD PUNITIVE DAMAGES**

One very effective method RBOCs have employed to harm their competitors is to withhold or delay payments of amounts owed and to resist or delay providing credit for amounts overcharged under interconnection agreements or tariffs. Allegiance has faced this situation time and again with the RBOCs. CLECs do not have the luxury of withholding payment as an offset to amounts owed or delaying payment to the RBOCs because the consequence of doing so is being cut off and denied access to the essential facilities we need to provide service to our customers.

It is not only the RBOCs that have resorted to self-help to withhold payment to CLECs. CLECs all across the country have been forced to bring lawsuits against AT&T to collect payment of access charges for the use of their networks to originate and terminate the long distance calls of AT&T's customers. AT&T complained for years about the ILECs' access rates, but never withheld payment as it has done with the CLECs. The FCC repeatedly has ruled that carriers are not entitled to engage in self-help to withhold payment, but instead must pay amounts billed pursuant to tariff under protest and then bring an action to challenge the billings. Unfortunately, AT&T has ignored these rulings and continues to use the CLECs' networks to complete their customers' calls without payment, benefiting as it does from the delays involved as the complaint cases wend their way through the courts and the public utility commissions.

If the CLEC industry is to survive, CLECs must have access to a forum that can resolve payment disputes on an accelerated basis and that can provide relief while the actions are pending. Congress should require the FCC to hear complaints arising under interconnection agreements or tariffs on an expedited basis and authorize it to provide interim relief in the nature of "Deadbeat Dad" remedies. If one party to the dispute has failed to pay charges billed by the other party, the FCC should require payment of the full amount billed within 30 days of the filing of the complaint unless the nonpaying party can show by clear and convincing evidence that the billing is fraudulent or otherwise invalid on its face. Such immediate relief, subject to true-up after a full hearing of the dispute, is necessary to remove the benefits the RBOCs and AT&T currently realize by delaying payment and depriving CLECs of the revenues necessary to fund their operations.

The Commission should also be given the necessary resources to process all such complaints under a revised Accelerated Docket. The FCC should be required to resolve disputes on the merits within 60 days of the filing of the complaints and should have the authority to grant all relief necessary to remedy violations of the agreement or tariff, including, but not limited to, injunctive relief, compensatory damages and punitive damages.

**THE FCC SHOULD ADOPT PERFORMANCE STANDARDS AND REGULATIONS TO IMPLEMENT ITS 271 ENFORCEMENT AUTHORITY**

For competition to survive, the FCC should adopt a comprehensive set of self-enforcing performance standards governing the provision of interconnection and unbundled network elements. While the carrot of entry into the long distance market provides some incentive for the RBOCs to provision interconnection and unbundled network elements at an acceptable level of performance in the months immediately prior to the filing of their Section 271 applications with the FCC, the performance standards they are required to meet vary state by state. In addition, the RBOCs have shown a proclivity to backslide once 271 relief has been granted and the carrot has been eaten. The penalties currently being assessed against incumbents have not proven sufficient in size to deter discriminatory and anticompetitive behavior as Allegiance can attest.

CLECs cannot succeed in the marketplace unless they can offer their customers a level of service comparable to what those customers can get from the RBOCs. National self-enforcing performance standards would create an invaluable tool for monitoring RBOC compliance with their obligations under the Act and detecting incidences of discriminatory behavior. The FCC should adopt minimum performance benchmarks, which RBOCs must meet in providing service to their CLEC customers with automatic monetary penalties to be paid to CLECs when the RBOCs' performance falls below the benchmarks.[2] To monitor

[2] Allegiance proposes, at a minimum, the following national performance standards:

- Firm Order Commitments (FOCs) and order rejections returned within 48 hours of order submission.

compliance, the FCC should require the RBOCs to publish monthly performance statistics on a state-by-state basis for installation and maintenance of interconnection trunks, UNEs and any other services CLECS purchase.  The performance reports should compare the intervals within which the RBOCs actually install and repair similar facilities for themselves, their retail customers and their affiliates and the intervals within which they provide such services for CLECs.  The reports should also compare the frequency and duration of service outages suffered by the RBOCs' retail customers and those suffered by CLECs.  If, over a 12 month period, the reports reveal a deterioration in service quality in any state in which they operate, the RBOCs should be required to show cause why their rates for interconnection and UNEs should not be reduced on a going forward basis by an amount proportionate to the deterioration in service quality.

In addition, the FCC should adopt rules that require RBOCs to provide automatic discounts on interconnection trunks, UNEs and special access services in any state where the actual installation and repair services they provide to CLECs are inferior to the services they

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FOCs should be complete and accurate when delivered and should identify all Circuit identification numbers, any potential facility issues, and working pair issues.  Initial order rejects should also be complete and should identify all issues with the order as opposed to the ILECs' current practice of issuing serial rejects, each identifying only one issue at a time.

- On-time delivery of facilities consistent with FOC date.
- Where ILEC reports that facilities are unavailable to fill CLEC order, ILEC must provide accurate delivery date within 48 hours after receipt of clean Local Service Request (LSR) or Access Service Request (ASR).
- Orders to augment trunk groups fulfilled in 14 days or less.
- Mean Time to Repair (MTTR) 24 hours or less for all out of service conditions.
- Timely and accurate notification of ILEC completion of CLEC colocation spaces and augments.
- Provisioning intervals for unbundled loops and interoffice transport at parity with provisioning intervals for comparable retail products.
- Mean Time Between Failure (MTBR) and repeat Trouble Tickets.
- Updates to CFA databases made within 24 hours.
- Billing accuracy standards.

provide to their retail customers and themselves. A sliding scale of discounts should be established based on frequency and extent of delays. For delays in installation of new services, the discounts would be applied to non-recurring charges. The RBOCs should not be permitted to assess any non-recurring charges for installation if service is not installed within the retail installation interval. For delays in repairing services, the discounts would apply to monthly recurring charges for the affected facilities. Self-enforcing penalties are imperative both because they will provide the right incentive for RBOCs to improve their performance and because CLECs receiving poor performance should not be required to pay full price.

The FCC should also adopt rules to implement the enforcement authority granted in Section 271(d) and to deter backsliding from compliance with the competitive checklist once the RBOCs are allowed into the long distance market. Such regulations should incorporate a range of penalties for violations of 271 and should include mandated rate reductions for wholesale services and network elements, suspension of 271 authority, the imposition of material fines and revocation of 271 authority.

**CONGRESS SHOULD CONSIDER A REQUIREMENT FOR STRUCTURAL SEPARATION OF THE RBOCS**

As I noted above, the RBOCs have the ability and the incentive to deny their competitors full, fair and nondiscriminatory access to their networks. If the increased penalties do not sufficiently alter their current anticompetitive behavior then I would suggest the only plausible solution at the end of the day would be for Congress to require structural, or at least functional, separation of the RBOCs' retail and wholesale operations. If the retail side of an RBOC's company was forced to purchase service for their customers under the same terms and conditions that CLECs are, the wholesale division would have significantly stronger incentives to improve provisioning and performance standards.

**CONCLUSION**

I testified in the Senate and the House when the Telecom Act was being considered, and I recall how we all expected the Telecom Act to unleash the power of competitive forces on the local telephone market. With access to the bottleneck facilities of the incumbents, in exchange for regulatory relief once their markets were open to robust competition, competitors would be able to provide new services at lower prices and with better quality. The incumbents would be forced to do likewise by the operation of market forces.

Looking back from five years out, the robust competition we expected then has been painstakingly slow to develop on a broad scale in the small business market and residential mass markets. I believe that this is due primarily to the lack of effective enforcement of the Telecom Act, caused by the FCC's limited resources and limited forfeiture authority. Despite good intentions, the FCC's enforcement authority, enforcement resources and cumbersome and bureaucratic processes are not geared to a dynamic competitive environment, and have facilitated the constant delays and violations of the Act by the RBOCs and AT&T.

Instead of invading each other's monopoly service territories and competing for each other's customers, the RBOCs have focused on combining their forces to form even larger monopolies. They have devoted scant effort to complying with Sections 251 and 252 of the Act. They have abused their dominant market power in many ways, including illegally withholding payments for exchange of traffic with CLECs. AT&T has also used its dominant position in the long distance market to favor the ILECs over new entrants in terms of paying its access bills, thereby causing significant financial harm to a number of CLECs.

The bottom line five years after passage of the Act is that (1) competitive choices are available to you if you are a large corporation; (2) far more often than not you remain at the whim of the local monopolist if you are a small or medium-sized business; and (3) most residential subscribers are still stuck with the same monopoly providers they had in 1996 for local phone and cable TV service, or the new owners who bought out those providers. There is nothing that Congress can do to make the reluctant monopolists (the RBOCs and AT&T) compete with each other. However, Congress can significantly improve the opportunity for competition to develop in the small business market and residential mass markets by arming the FCC with greatly increased enforcement powers, and by directing it to establish objective performance standards that can be enforced with meaningful penalties. I urge you to strengthen the FCC's enforcement powers to help ensure that as the RBOCs and AT&T get bigger, the strides made by CLECs in providing consumers with competitive choices are not reversed. It is imperative that Congress make the penalties for noncompliance with the Act steep enough to serve as a deterrent, and not just a cost of doing business for the monopoly providers.