CONSULTING

Date: 3/22/2002

To: Sam McClerren, ICC Telecommunications Division

From: Jason Hendricks, GVNW Consulting, Inc.

Re: Code Part 731 (ICC Docket 01-0539)

The following are GVNW's comments on Staff's proposed Code Part 731, Version 2a (3/4/2002). Attached is a redline version of GVNW's proposed modifications to Staff's proposed rule, which incorporates the comments set forth below.

In drafting these comments, I have attempted to address concerns raised by various parties in the last workshop while ensuring that the needs of the carriers I represent are still met. Correspondingly, the attached document represents what I would consider to be compromise proposal that is subject to change should positions advocated by other parties substantially alter the balance of the compromise proposed. The following discussion explains the balance that I have attempted to achieve in the attached document.

In the last workshop, some of the large CLECs and Citizens expressed concerns about the severity of the remedies that would apply to Level 2 carriers. In addition, the IITA stated that because certain safeguards were removed from the Level 3 section, the IITA was likely to be much more concerned about the provisions applicable to Level 2 carriers. To address the concerns of these three parties, I have proposed three general modifications. First, to address concerns expressed by the large CLECs, I have proposed that they be removed from Level 2 and instead be considered Level 4 carriers, a class of carriers exempt from the rule due their to exemptions from Section 251(c) of the Telecommunications Act. Second, to address concerns expressed by the IITA, I have proposed to reincorporate language included in the Level 3 section from Staff's version 2 (language that was removed in Staff's version 2a), on issues that the Commission must consider before a Level 3 carrier becomes a Level 2 carrier. Third, to address concerns expressed by Citizens, I have proposed less severe remedies that apply for failure to meet the performance standards. In return for these modifications, I have proposed elimination of the sections addressing thresholds that must be met before remedies apply for missed standards. By addressing the concerns of the large CLECs, the IITA, and Citizens in the manner proposed, there is no longer a need to include thresholds that I believe would be difficult to administer while providing no assurance on wholesale service quality standards to carriers competing with Level 2 carriers (due to the fluctuations in demand causing on-again off-again performance standards under Staff's proposal).

I would also like to make a few additional comments about the attached proposal:

- For Level 2 carriers, the proposed remedies that apply for failure to meet standards applicable to:

    - FOC and Reject Notices have been changed to a one time, non-graduated penalty equal to 20% of the monthly recurring charge ("MRC") for the service. The result is a less severe penalty. In addition, by classifying the "C" in FOC as "confirmation" instead of "commitment," this should further alleviate the concerns expressed by some parties that the provisioning intervals and the associated remedies for FOCs are too severe.

    - Provisioning Intervals have been changed to 20% of the MRC per business day. The result is a less severe penalty.

    - Maintenance and Repair have been changed to a specific percentage of the MRC depending on the service in question. The result is a less severe penalty.

  Setting the remedies as a percentage of MRCs for every failure makes sense from a number of perspectives. First, the severity of the remedies is equalized across companies unlike what would occur under a specific monetary remedy scheme, which would vary in severity depending on the amount of the MRC of the specific carrier in question. For example a $10 per day remedy is more severe for a Level 2 ILEC that charges $20 per month for a loop than for a Level 2 ILEC that charges $25 per month for a loop. Second, the methodology could be easily administered and accounted for in billing systems. Third, the methodology provides a level of remedy escalation for missed provisioning interval and maintenance/repair standards, thereby further incenting Level 2 ILECs to provide service in a timely fashion once the initial standard has been missed. Fourth, the remedy methodology avoids the problems that would occur if standards were to be based on a percentage-of-standard (ex. 95% of loops provided in 5 days). As discussed in the last workshop, applying percentage-of-standards before a Level 2 ILEC must pay a remedy complicates the process because of decisions that must be made on which CLEC gets the remedy when the standard (say 95%) is missed. In addition, applying percentage-of-standards would likely lead to calls by Level 2 ILECs for statistical alterations to exempt small sample sizes and the correspondingly lead to objections by small CLECs who would be negatively impacted by the small sample statistical exemption.

- GVNW strongly proposes that thresholds be removed from the rule. Level 2 carriers have wholesale obligations today under Section 251(c) of the Act for the services addressed in Code Part 731. These carriers should, therefore, be prepared to offer the services addressed in the rule. In addition, the Level 2 ILECs have interconnection agreements for these services, some of which contain forecasting language that helps prepare the Level 2 ILECs for fluctuations in CLEC demand. Thus, the Level 2 ILECs should have systems in place and be prepared for CLEC orders for the services covered in Code Part 731 (keep in mind that the CLECs that intend to compete with Level 2 carriers have only requested that the rule apply for 4 services and three standards, a much less burdensome requirement than that which applies to Level 1

carriers). If Staff still believes that thresholds are appropriate, GVNW recommends that the thresholds be set based on a reasonable level of historic demand rather than on monthly or quarterly demand, which is subject to volatility and leads to a process that is unduly complex while providing virtually no assurance on service quality standards for CLECs competing with Level 2 carriers due to the on-again off-again performance standards that would occur under a monthly/quarterly threshold exemption. In addition, if Staff still proposes to include thresholds, GVNW proposes that the same standards apply for each service but that the remedy be made even less severe (for example, 10% of the MRC for UNE loops provided after 5 business days rather than 20% of the MRC).

- Under GVNW's proposal, carriers classified as Level 4 carriers can be reclassified as Level 2 carriers if their exemption from Section 251(c) of the Act is revoked pursuant to Section 251(h) of the Act. Prior to a Level 4 carrier becoming subject to Level 2 requirements, the Commission should rule upon a number of issues similar to those that the Commission should rule upon before a Level 3 carrier can be subject to Level 2 requirements. Tying the CLEC exemption to Section 251(c) makes sense because of the inherent differences in obligations currently placed on CLECs relative to ILECs for wholesale services under the Act. If Staff is uncomfortable with the 251(c) distinction for CLECs, GVNW recommends that Staff at least put CLECs into an exempt Level 4 category but, instead, make the trigger for compliance with the Level 2 standards based upon a bona fide request from another carrier that the Level 4 CLEC become a Level 2 carrier. Other than parity concerns that all carriers should be subject to the same standards (an issue now made moot by the establishment of Levels), no party has expressed a need to have wholesale service standards apply to CLECs. Non-ILEC-to non-ILEC wholesale relationships, as incidental as they are, are best handled in contracts between the parties (and not in rules) due to the lack of disincentives for providing quality service in these relationships as are inherent in an ILEC-to-competitor relationship. This is presumably the rationale behind the distinction between 251(b) requirements and 251(c) requirements. Inclusion of CLECs in Level 2 will only complicate Staff's efforts to pass Code Part 731 due to modifications that may be needed to address concerns of large CLECs who would be subject to the rule.

- I have proposed elimination of the loss notification and customer service record placeholders proposed by Staff because there was a lot of confusion in the last workshop on whom is responsible for what in which circumstances. I am not necessarily opposed to provisions addressing these issues but there seems to be a need for more discussion about the issues before they can adequately be addressed in the Code Part.