

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.

DOCKET NO. 000121-TP  
ORDER NO. PSC-01-0242-PCO-TP  
ISSUED: January 26, 2001

ORDER ESTABLISHING PROCEDURE

The Commission has opened this docket to develop permanent performance metrics for the ongoing evaluation of operations support systems (OSS) provided by incumbent local exchange carriers (ILECs). The purpose of the performance metrics and associated monitoring and enforcement program is to ensure that alternative local exchange carriers (ALECs) receive non-discriminatory access to the ILEC's OSS. Performance monitoring is necessary to ensure that ILECs are meeting their obligation to provide unbundled access, interconnection and resale to ALECs in a nondiscriminatory manner. Additionally it establishes a standard against which ALECs and the Commission can measure performance over time to detect and correct any degradation of service provided to ALECs.

This docket consists of three phases. Phase I began with workshops between Commission staff and members of the ALEC and ILEC communities, which were held on March 30, 2000, August 8, 2000 and December 13, 2000. The purpose of Phase I is to determine and resolve any policy and legal issues in this matter. Phase II will involve establishing permanent metrics for BellSouth Telecommunications, Inc. (BellSouth), including a specific monitoring and enforcement program. The procedural requirements and dates set forth in this Order Establishing Procedure pertain to Phases I and II. Any performance assessment plan resulting from Phases I and II will apply to BellSouth only. Phases I and II are currently set for an administrative hearing on April 25-27, 2001. At the completion of Phase II, our staff will begin Phase III of this docket which will entail the establishment of performance metrics and a performance monitoring and evaluation program for the other Florida ILECs.

DOCUMENT NUMBER-DATE

01211 JAN 26 01

FPSC-RECORDS/REPORTING

The Commission is vested with jurisdiction over this matter pursuant to Sections 364.01(3) and (4)(g), Florida Statutes. Pursuant to Section 364.01 (3), Florida Statutes, the Florida legislature has found that regulatory oversight is necessary for the development of fair and effective competition in the telecommunications industry. To that end, Section 364.01 (4) (g), Florida Statutes, provides, in part, that the Commission shall exercise its exclusive jurisdiction in order to ensure that all providers of telecommunication service are treated fairly, by preventing anticompetitive behavior. Furthermore, it is noted that the FCC has encouraged the states to implement performance metrics and monitoring for purposes of evaluating the status of competition under the Telecommunications Act of 1996.

This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

The scope of this proceeding shall be based upon the issues raised by the parties and Commission staff up to and during the prehearing conference, unless modified by the Commission.

#### Discovery

Due to the expedited time schedule for this proceeding, all discovery responses shall be served within 20 days of service of the discovery request. There shall be no extra time for mailing throughout this proceeding.

When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes. Copies of all discovery requests and responses served on or by the parties shall be sent to the Commission staff attorney in order to assist in the processing of this expedited case.

The hearing in this docket is set for April 25-27, 2001. Unless authorized by the Prehearing Officer for good cause shown, all discovery shall be completed by April 18, 2001. All interrogatories and requests for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a set and any subsequent discovery requests will continue the sequential numbering system. Pursuant to Rule 28-106.206, Florida Administrative Code, unless subsequently modified by the Prehearing Officer, the following shall apply: interrogatories, including all subparts, shall be limited to 250, and requests for production of documents, including all subparts, shall be limited to 250.

Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been made a part of the evidentiary record in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time period set forth in Section 364.183, Florida Statutes.

#### Diskette Filings

See Rule 25-22.028(1), Florida Administrative Code, for the requirements of filing on diskette for certain utilities.

#### Prefiled Testimony and Exhibits

Each party and Commission staff shall prefile, in writing, all testimony that it intends to sponsor. Such testimony shall be typed on 8 1/2 inch x 11 inch transcript-quality paper, double spaced, with 25 numbered lines, on consecutively numbered pages, with left margins sufficient to allow for binding (1.25 inches).

Each exhibit intended to support a witness' prefiled testimony shall be attached to that witness' testimony when filed, identified by his or her initials, and consecutively numbered beginning with 1. All other known exhibits shall be marked for identification at the prehearing conference. After an opportunity for opposing parties to object to introduction of the exhibits and to cross-examine the witness sponsoring them, exhibits may be offered into evidence at the hearing. Exhibits accepted into evidence at the hearing shall be numbered sequentially. The pages of each exhibit shall also be numbered sequentially prior to filing with the Commission.

An original and 15 copies of all testimony and exhibits shall be prefiled with the Director, Division of Records and Reporting, by the close of business, which is 5:00 p.m., on the date due. A copy of all prefiled testimony and exhibits shall be served by mail or hand delivery to all other parties and staff no later than the date filed with the Commission. Failure of a party to timely prefile exhibits and testimony from any witness in accordance with the foregoing requirements may bar admission of such exhibits and testimony.

#### Prehearing Statement

All parties in this docket shall file a prehearing statement. Staff will also file a prehearing statement. The original and 15 copies of each prehearing statement shall be prefiled with the Director of the Division of Records and Reporting by the close of business, which is 5:00 p.m., on the date due. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the Commission. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or by the Commission. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below.

- (a) The name of all known witnesses that may be called by the party, and the subject matter of their testimony;

- (b) a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each;
- (c) a statement of basic position in the proceeding;
- (d) a statement of each question of fact the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (e) a statement of each question of law the party considers at issue and the party's position on each such issue;
- (f) a statement of each policy question the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue;
- (g) a statement of issues that have been stipulated to by the parties;
- (h) a statement of all pending motions or other matters the party seeks action upon;
- (i) a statement identifying the parties' pending requests or claims for confidentiality; and
- (j) a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.
- (k) a statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter.

Prehearing Conference

Pursuant to Rule 28-106.209, Florida Administrative Code, a prehearing conference will be held April 13, 2001 at the Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. Any party who fails to attend the prehearing conference, unless excused by the Prehearing Officer, will have waived all issues and positions raised in that party's prehearing statement.

Prehearing Procedure: Waiver of Issues

Any issue not raised by a party prior to the issuance of the prehearing order shall be waived by that party, except for good cause shown. A party seeking to raise a new issue after the issuance of the prehearing order shall demonstrate that: it was unable to identify the issue because of the complexity of the matter; discovery or other prehearing procedures were not adequate to fully develop the issue; due diligence was exercised to obtain facts touching on the issue; information obtained subsequent to the issuance of the prehearing order was not previously available to enable the party to identify the issue; and introduction of the issue could not be to the prejudice or surprise of any party. Specific reference shall be made to the information received, and how it enabled the party to identify the issue.

Unless a matter is not at issue for that party, each party shall diligently endeavor in good faith to take a position on each issue prior to issuance of the prehearing order. When a party is unable to take a position on an issue, it shall bring that fact to the attention of the Prehearing Officer. If the Prehearing Officer finds that the party has acted diligently and in good faith to take a position, and further finds that the party's failure to take a position will not prejudice other parties or confuse the proceeding, the party may maintain "no position at this time" prior to hearing and thereafter identify its position in a post-hearing statement of issues. In the absence of such a finding by the Prehearing Officer, the party shall have waived the entire issue. When an issue and position have been properly identified, any party may adopt that issue and position in its post-hearing statement.

Document Identification

To facilitate the management of documents in this docket, exhibits will be numbered at the Prehearing Conference. Each exhibit submitted shall have the following in the upper right-hand corner: the docket number, the witness's name, the word "Exhibit" followed by a blank line for the exhibit number and the title of the exhibit.

An example of the typical exhibit identification format is as follows:

Docket No. 12345-TL  
J. Doe Exhibit No. \_\_\_\_\_  
Cost Studies for Minutes of Use by Time of Day

Approved Issues

Attached to this order as Appendix "A" is a tentative list of the issues which have been identified in this proceeding. On January 19, 2001, Commission staff held an issue identification meeting with the parties. Parties and staff were able to come to agreement on the majority of issues set forth in Appendix "A." There are five disputed issues, however. Issue No. 1(a)-(b) raises the question of what are the appropriate service quality measures for BellSouth, including the appropriate business rules, exclusions, calculations, and levels of disaggregation and performance standards for each. Issue No. 2(a)-(b) raises the question of what are the appropriate enforcement measures to be reported by BellSouth for Tier 1 and Tier 2, and what are the appropriate levels of disaggregation for compliance reporting. Issue No. 9 raises the question of what are the appropriate enforcement measurement benchmarks and analogs.

The majority of ALEC parties have raised multiple issues which are subsumed by these broader issues. The proposed ALEC issues would have the Commission make individual decisions regarding specific enumerated measures set forth under the following categories: 1) pre-ordering; 2) ordering; 3) provisioning; 4) maintenance and repair; 5) billing; 6) collocation; and 7) additional measures. For each of the measures under these categories, the ALECs would also have the Commission decide

separate issues regarding the appropriate business rules, exclusions, calculation formula, level of disaggregation and benchmark or retail analog. According to the ALECs, measures should be specifically enumerated in the issues to guarantee a decision for each. BellSouth argues that parties will have the opportunity to raise those questions within the broader issues. Parties should be afforded an opportunity to raise those issues which address their concerns in this proceeding. I find that the broader issues discussed herein will afford the parties that opportunity. Therefore, upon consideration, I find that Issues Nos. 1(a)-(b), 2(a)-(b) and 9 are appropriate as worded.

Issues Nos. 11(b) and 12(b) are also disputed. Each raises the question of how parity should be defined for the purposes of a BellSouth performance assessment plan. BellSouth objects to the inclusion of this issue on the ground that it is subsumed by other issues. The definition of parity, however, is an important threshold issue which should be addressed independently and before discussion of the appropriate statistical methodology to detect the presence or absence of parity. Therefore, Issues Nos. 11(b) and 12(b) shall be included for consideration in this proceeding.

Based on the foregoing, the issues approved for consideration in this docket are those issues attached to this Order as Appendix "A". Prefiled testimony and prehearing statements shall address the issues set forth in Appendix "A".

#### Controlling Dates

The following dates have been established to govern the key activities of this case.

- |   |                   |
|---|-------------------|
| 1) Parties' direct testimony and exhibits | February 7, 2001  |
| 2) Parties' direct testimony and exhibits | March 1, 2001     |
| 3) Rebuttal testimony and exhibits        | March 21, 2001    |
| 4) Prehearing Statements                  | March 30, 2001    |
| 4) Prehearing Conference                  | April 13, 2001    |
| 5) Hearing                                | April 25-27, 2001 |
| 6) Briefs                                 | May 16, 2001      |



Use of Confidential Information At Hearing

It is the policy of this Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding. Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute. Failure of any party to comply with the seven-day requirement described above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.

When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material. Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so. At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

Post-Hearing Procedure

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the

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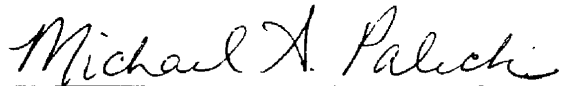
prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement in conformance with the rule, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

Based upon the foregoing, it is

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that the provisions of this Order shall govern this proceeding unless modified by the Commission.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 26th day of January, 2001.



MICHAEL A. PALECKI  
Commissioner and Prehearing Officer

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

Appendix A  
Approved Issues List

- A. How should the results of KPMG's review of BellSouth performance measures be incorporated into this proceeding?
  1. a. What are the appropriate service quality measures to be reported by BellSouth?
    - b. What are the appropriate business rules, exclusions, calculations, and levels of disaggregation and performance standards for each?
  2. a. What are the appropriate Enforcement Measures to be reported by BellSouth for Tier 1 and Tier 2?
    - b. What are the appropriate levels of disaggregation for compliance reporting?
  3. a. What performance data and reports should be made available by BellSouth to ALECs?
    - b. Where, when, and in what format should BellSouth performance data and reports be made available?
  4. a. Does the Commission have the legal authority to order implementation of a self-executing remedy plan?
    - b. With BellSouth's consent?
    - c. Without BellSouth's consent?
  5. a. Should BellSouth be penalized when BellSouth fails to post the performance data and reports to the Web site by the due date?
    - b. If so, how should the penalty amount be determined, and when should BellSouth be required to pay the penalty?
  6. a. Should BellSouth be penalized if performance data and reports published on the BellSouth Web site are incomplete or inaccurate?

- b. If so, how should the penalty amount be determined, and when should BellSouth be required to pay the penalty?
7. What review process, if any, should be instituted to consider revisions to the Performance Assessment Plan that is adopted by this Commission?
8. When should the Performance Assessment Plan become effective?
9. What are the appropriate Enforcement Measurement Benchmarks and Analogs?
10. Under what circumstances, if any, should BellSouth be required to perform a root cause analysis?
11.
  - a. What is the appropriate methodology that should be employed to determine if BellSouth is providing compliant performance to an individual ALEC? (Tier 1)
  - b. How should parity be defined for purposes of the Performance Assessment Plan?
  - c. What is the appropriate structure?
    1. What is the appropriate statistical methodology?
    2. What is the appropriate parameter delta, if any?
    3. What is the appropriate remedy calculation?
    4. What is the appropriate benchmark table for small sample sizes?
    5. Should there be a floor on the balancing critical value?
12.
  - a. What is the appropriate methodology that should be employed to determine if BellSouth is providing complaint performance on a statewide ALEC-aggregate basis? (Tier 2)
  - b. How should parity be defined for purposes of the Performance Assessment Plan?
  - c. What is the appropriate structure?
    1. What is the appropriate statistical methodology?

2. What is the appropriate parameter delta, if any?
  3. What is the appropriate remedy calculation?
  4. What is the appropriate benchmark table for small sample sizes?
  5. Should there be a floor on the balancing critical value?
13. When should BellSouth be required to make payments for Tier 1 and Tier 2 noncompliance, and what should be the method of payment?
  14.
    - a. Should BellSouth be required to pay interest if BellSouth is late in paying an ALEC the required amount for Tier 1?
    - b. If so, how should the interest be determined?
  15. Should BellSouth be fined for late payment of penalties under Tier 2? If so, how?
  16. What is the appropriate process for handling Tier 1 disputes regarding penalties paid to an ALEC?
  17. What is the appropriate mechanism for ensuring that all penalties under Tier 1 and Tier 2 Enforcement Mechanisms have been paid and accounted for?
  18. What limitation of liability, if any, should be applicable to BellSouth?
  19.
    - a. What type of cap, if any, is appropriate for inclusion in the Performance Assessment Plan?
    - b. What is the appropriate dollar value of a cap if applicable?
  20. What process, if any, should be used to determine whether penalties in the excess of the cap should be required?
  21. If there is a cap, for what period should the cap apply?

22. Should the Performance Assessment Plan include a Market Penetration Adjustment, and if so how should such an adjustment be structured?
23. Should the Performance Assessment Plan include a Competitive Entry Volume Adjustment, and if so how should such an adjustment be structured?
24.
  - a. Should periodic third-party audits of Performance Assessment Plan data and reports be required?
  - b. If so, how often should audits be conducted, and how should the audit scope be determined?
25. If periodic third-party audits are required, who should be required to pay the cost of the audits? :
26. Who should select the third-party auditor if a third-party audit is required?
27.
  - a. Should an ALEC have the right to audit or request a review by BellSouth for one or more selected measures when it has reason to believe the data collected for a measure is flawed or the report criteria for the measure is not being adhered to?
  - b. If so, should the audit be performed by an independent third party?
28. Should BellSouth be required to retain performance measurement data and source data, and if so, for how long?
29. What is the appropriate definition of "affiliate" for the purpose of the Performance Assessment Plan?
30.
  - a. Should BellSouth be required to provide "affiliate" data as it relates to the Performance Assessment Plan?

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b. If so, how should data related to BellSouth affiliates be handled for purposes of

1. Measurement reporting?
2. Tier 1 compliance?
3. Tier 2 compliance?

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