

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-01-0964-PHO-TP
ISSUED: April 19, 2001

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on April 13, 2001, in Tallahassee, Florida, before Commissioner Michael A. Palecki, as Prehearing Officer.

APPEARANCES:

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On behalf of BellSouth Telecommunications, Inc.

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On behalf of e.spire Communications, Inc.

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On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

II. CASE BACKGROUND

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.

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.

Opening statements, if any, shall not exceed 20 minutes per side (BellSouth and ALECs)

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. 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 used 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 periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service 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.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) 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.

- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) 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.
- d) 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.
- e) 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.

IV. POST-HEARING PROCEDURES

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 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, 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 80 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties and Staff has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes

the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct/Rebuttal</u>		
Paul W. Stallcup	Staff	
Karen Kinard	ALEC	A, 1 (a) , 1 (b) , 24 (a) , 24 (b) , 25, 26, 27 (a) , 27 (b) , 28, 29, 30 (a) , 30 (b)
David A. Coon	Bellsouth	A, 1 (a) , 1 (b) , 2 (a) , 2 (b) , 3 (a) , 3 (b) , 5 (a) , 5 (b) , 6 (a) , 6 (b) , 7 , 8 , 9 , 10 , 11 (a) (2) , 11 (a) (3) , 11 (a) (4) , 11 (b) (2) , 11 (b) (3) , 11 (b) 4 , 11 (c) 2 , 11 (c) 3 , 11 (c) 4 , 12 (a) 2 , 12 (a) 3 , 12 (a) 4 , 12 (b) 2 , 12 (b)) 3 , 12 (b) 4 , 12 (c) 2 , 12 (c) 3 , 12 (c) 4 , 13 , 14 (a) , 14 (b) , 15, 16 , 17, 18, 19 (a) , 19 (b) , 20 , 21 , 23 , 24 (a) , 24 (b) , 25, 26, 27 (a) , 27 (b) , 28
Cynthia K. Cox	Bellsouth	4 , 8 , 29 , and 30
Dr. Edward J. Mulrow	Bellsouth	11 (c) (1) , 11 (c) (2) , 11 (c) (5) , 12 (c) (1) , 12 (c) (2) , 12 (C) (5) , 23
Thomas E. Allen	ALEC	1 (a) , (b) , 2 (b) , 9, 13
James C. Falvey	ALEC	

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
Michael Iacino	ALEC	
William Gulas**	IDS	All issues
Keith Kramer**	IDS	All issues
John Rubino	ZTEL	7
Cheryl Bursh	ALEC	2(a), 2(b), 3(a), 3(b), 4(a), 4(b), 4(c), 5(a), 5(b), 6(a), 6(b), 7, 8, 9, 10, 11, (a), 11(c3-5), 12(a) 12 (c3-5), 13, 14(a), 14(b), 15, 16, 17, 18, 19(a), 19(b), 20, 21, 22, 23
Dr. Robert M. Bell	ALEC	11(c1-2), 12(c1-2)
Dr. George S. Ford	ZTEL	2(b), 8, 10, 11 (a,b, c1-2, 5), 12(a,b,c1- 5), 18, 19(a-b), 23
Jerry Latham*	Bellsouth	1(a), and 9
Ron Pate*	Bellsouth	1(a)
Dr. William E. Taylor*	Bellsouth	1(a), 2(a), 2(b), 11, 12, 18, 19, 20, 21, 22, 23

* These witnesses only filed rebuttal testimony.

** These witnesses only filed direct testimony and are the subject of a Motion to Supplement Direct Testimony.

VII. BASIC POSITIONS

BST: BellSouth's proposed Performance Assessment Plan should be approved by the Commission. BellSouth's plan is comprehensive and is based on sound principles. For instance, the plan recognizes that not all metrics should be treated equally, and it applies this recognition by

offering greater remedies for some measurements than for others. The multi-tiered structure of BellSouth's plan will ensure that BellSouth will continue to provide service at parity by escalating penalties for continued violations. The remedies inherent in BellSouth's plan escalate with an increase in disparate performance and with the increased certainty that this disparity exists. Finally, the statistical methodology proposed by BellSouth is capable of identifying systematic disparate treatment, thereby ensuring that BellSouth provides non-discriminatory service to all Alternative Local Exchange Carriers ("ALECs").

As to the timing of plan implementation, the purpose of the plan is to prevent "backsliding" after BellSouth obtains 271 authority. For this reason, the enforcement portion of the plan should not go into effect until BellSouth obtains interLATA relief in Florida.

Although BellSouth's plan is similar in many respects to the StrawMan Proposal advocated by Staff, and described in the testimony of Staff's witness, Paul Stallcup, BellSouth respectfully submits that its plan should be adopted in the areas in which it differs from Staff's proposal. What the Commission should not do, however, is adopt the seriously flawed plan submitted by the ALECs. The ALEC plan would result in the excessive payment of penalties from BellSouth to ALECs, even in those circumstances in which BellSouth is providing service at parity. Adoption of the ALEC plan would result in a transfer from BellSouth to ALECs of extremely large amounts of unwarranted penalty payments, but would accomplish little else.

Specifically, the ALEC plan suffers from a number of problems. These include (1) the fact that the ALEC plan is structured so that each measure carries equal weight, despite the fact that failure to meet a particular measure would not have the same impact on customers as a failure to meet a different measure; (2) parity decisions are based on a level of disaggregation that does not make "like-to-like" comparisons; (3) the statistical

methodology proposed by the ALECs is flawed; and (4) the conceptual framework of the ALECs Tier 1 and Tier 2 remedies is flawed. Perhaps most importantly, the ALEC plan, if adopted, would take an extremely long time to implement, and after implementation, would be so complicated that its administration would be difficult, if not impossible.

ALEC: BellSouth's proposed performance assessment plan is insufficient to meet ALEC needs and does not adequately reveal discriminatory behavior. Improved OSS functionality, enhanced performance measurements, appropriate performance standards and remedies will be critical factors in enabling ALECs to enter the Florida local market, particularly the residential market. Many of the metric revisions and new metrics proposed by the ALEC Coalition are geared toward ensuring that ALECs' market entry does not run into many of the same impediments encountered elsewhere.

The performance measurement plan adopted by this Commission should be comprehensive because significant gaps in coverage can make it extraordinarily difficult and time-consuming to detect and deter below-parity performance. Measurements should cover all problems that can and have arisen through real market experience. When an area of BellSouth's performance is not covered by a metric, the primary tool available to an ALEC to remedy poor performance is an action to enforce the parties' interconnection agreement. An enforcement case can take a year or more to complete, which typically is far too long for an ALEC attempting to solve an immediate problem affecting its business. Therefore, in addition to adopting a comprehensive set of measures that covers all aspects of ALEC and BellSouth activities, this Commission should adopt a self-executing remedy plan designed to incent BellSouth to meet its obligations under the Telecommunications Act of 1996 to provide ALEC with parity service and open its local markets to competition.

The remedy plan proposed by the ALEC Coalition incorporates each of the criteria identified by the FCC

for designing an effective remedy plan and is the appropriate plan for this Commission to adopt in this proceeding.

KMC: KMC adopts the position of the ALEC Coalition.

Z-TEL: The performance assessment plan is one of the most important regulatory issues facing the Commission. Such a program is needed now to protect competition, which is most vulnerable in the early stages of development, from discrimination. Further, if and when BellSouth is permitted to participate in the interexchange market, the performance assessment plan will be the first line of defense against the erosion of its commitment to provide parity of service to its competitors in the local exchange market. This Commission must design a plan that will assure fair competition among providers of local exchange service. Whether or not BellSouth finds the terms of the plan acceptable is immaterial, because any effective plan is incompatible with the profit-maximizing incentives of BellSouth. The experience in other jurisdictions teaches that the Commission should ensure that measures are well defined; that the appropriate data is captured for the purpose; that the requirements have been subjected to real experience in the commercial marketplace; and that the Commission retains the authority and flexibility to modify the program as needed.

One of the key aspects of the performance assessment plan is the statistical technique devised to identify discrimination. Conceptually, Z-Tel agrees with the proposition that the possibility of testing errors should be mitigated by "balancing" (offsetting) the statistical probability of finding discrimination when none exists with the probability of finding no discrimination when it does exist. However, the balancing technique is highly sensitive to assumptions of differences in the means of the ALEC and of BellSouth, as well as sample size. Unless safeguards are built into the mechanism, the "balancing" feature will frequently produce absurd, counterproductive results. The Commission should

recognize that, once a level of statistical significance is reached that assures there is virtually no possibility of imposing a penalty on BellSouth when none is deserved, additional "mitigation" serves only to bias the test by needlessly making discrimination harder to detect. To avoid this outcome, as well as to maintain the integrity of the statistical technique and the usefulness of the performance assessment mechanism, Z-Tel advocates the use of either a "delta function" that varies the assumed difference in means differences with sample size (preferred) or, alternatively, a floor on the "balancing critical value."

The transaction-based payment regime of the BellSouth Plan is so flawed that BellSouth's own experts are critical of the approach. The measure-based payment approach recommended by the ALECs is both reasonable and flexible, giving the Commission substantial leeway in adjusting the mechanism to satisfy its own requirements.

Finally, the level of aggregation proposed by BellSouth is excessive. There is no reason to aggregate widely disparate products in a single statistical procedure, but such aggregation of statistics across product lines could mask occurrences of discrimination.

E.SPIRE: The Commission should adopt adequate performance measurements and remedies that are sufficient to ensure that BellSouth provides timely services to e.spire and other ALECs. Measurements and remedies are necessary in order to ensure that the services provided to e.spire is at parity with the services BellSouth provides to itself and its affiliates and to ensure that the industry is open to competition.

IDS: IDS has experienced tremendous difficulties with the OSS provided by BellSouth for provisioning of both resale and UNEs. IDS has had extensive experience in the use of BellSouth's OSS and has found that BellSouth's OSS continues to cripple IDS' operations and to completely hinder any possibility of the development of competition in the local exchange services market. Any performance

measures adopted by the Commission must be easily understandable, enforceable and verifiable, and must provide for serious ramifications in the event of BellSouth's continued failure to meet its obligations regarding the provision of OSS that are at parity with its internal OSS.

STAFF: Testifying staff outlines concepts that should be addressed in developing a Performance Assessment Plan for BellSouth Telecommunications, Inc. (BellSouth). As such, testifying staff is not advocating positions on the issues identified in this proceeding.

Non-testifying staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

VIII. ISSUES AND POSITIONS

ISSUE A: How should the results of KPMG's review of BellSouth performance measures be incorporated into this proceeding?

POSITIONS

BST: Assuming KPMG's review is not completed at the time of the hearing in this matter, any appropriate modifications should be addressed as part of the next performance assessment plan review cycle. This review should occur approximately six months after the completion of this proceeding.

ALEC: Some of the additional measures under review by KPMG have been ordered in other jurisdictions and should be adopted by the Commission as part of this proceeding. Additionally, KPMG is reviewing the appropriateness of BellSouth's existing measures. ALEC Coalition testimony identifies critical changes that the Commission should

make to BellSouth's existing measures. To the extent KPMG recommends changes to BellSouth's SQM or additional measures beyond those requested by the ALECs, those measures should be reviewed as part of the first six-month review cycle. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: No position at this time.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 1a: What are the appropriate service quality measures to be reported by BellSouth?

POSITIONS

BST: The appropriate service quality measures to be reported by BellSouth are those contained in the BellSouth Service Quality Measurements (SQM) that are attached to the testimony of BellSouth witness, David Coon, as Exhibit DAC-1.

ALEC: Although BellSouth's direct testimony includes some additional measures proposed by the ALEC Coalition in Karen Kinard's testimony, there are still some problems with BellSouth's proposed metrics. (See Exhibit KK-5). BellSouth should be required to implement the changes proposed by the ALEC Coalition (See Direct Testimony of Karen Kinard, pp. 6-7, and 10-24, and Exhibits KK 1-5). (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 1b: What are the appropriate business rules, exclusions, calculations, and levels of disaggregation and performance standards for each?

POSITIONS

BST: The appropriate business rules, exclusions, calculations, and levels of disaggregation and performance standards are those set forth in BellSouth's SQM, which is attached to the testimony of BellSouth witness, David Coon, as Exhibit DAC-1.

ALEC: The appropriate business rules, calculation formulas, disaggregation levels and standards for the additional metrics proposed by the ALEC Coalition are described in Exhibit KK-4 of Karen Kinard's testimony. Exhibit KK-1 of Karen Kinard's testimony identifies changes that should be made to the business rules, calculation formulas, disaggregation levels, and standards of metrics currently included in BellSouth's SQM. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

e.spire: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 2a: What are the appropriate Enforcement Measures to be reported by BellSouth for Tier 1 and Tier 2?

POSITIONS

BST: The enforcement plan should utilize key measures in areas that affect customers. BellSouth's plan, which is patterned, in part, after the measurements that were used in New York and Texas, does so. It is not appropriate to have a penalty associated with each and every measurement in the performance plan, since this would result in duplicative penalties, as well as penalties that do not correspond to the effect of any disparate performance.

ALEC: Because the sub-measures proposed by the ALEC Coalition monitor key areas of ALEC and BellSouth activity, all sub-measures proposed are included Tier 1 and Tier 2 of the ALEC Enforcement plan. Consequently, BellSouth should report all proposed sub-measures in both Tier 1 and Tier 2. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 2b: What are the appropriate levels of disaggregation for compliance reporting?

POSITIONS

BST: The appropriate level of disaggregation for compliance reporting is that proposed by BellSouth and set forth in Exhibit DAC-4 to the testimony of BellSouth witness, David Coon.

ALEC: The ALEC Coalition believes that performance data must be broken down into categories that are sufficiently specific to allow for like-to-like comparisons.

The ALEC Coalition proposes that disaggregation be required by interface type, pre-order query type, product, volume category, work activity type, trouble type, trunk design and type (for trunk blockage measurements), maintenance and repair query type and collocation category. The required disaggregation for each specific measure is included in Karen Kinard's direct testimony. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: The appropriate levels of disaggregation are those at the cell or submeasure level that are associated with the modified Z test. Aggregating different tests across product lines serves no useful purpose and could have the effect of masking discrimination. (Ford)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 3a: What performance data and reports should be made available by BellSouth to ALECs?

POSITIONS

BST: The appropriate performance data and reports to be made available by BellSouth to ALECs are those identified in BellSouth's SQM, as set forth in Exhibit DAC-1 to the testimony of BellSouth witness Dave Coon.

ALEC: BellSouth should be required to make available sufficient performance data and reports to allow ALECs to make performance determinations. The reports should include data reporting on BellSouth's provision of services to BellSouth's retail customers in aggregate, services and facilities provided to any BellSouth local exchange affiliate and carriers purchasing interconnection, unbundled network elements or resale individually and in

the aggregate. BellSouth should also report results for benchmarks.

Additionally, ALECs should be given access to all raw data used to create performance reports to allow them to validate the information reported by BellSouth. BellSouth should maintain a current and accurate user's manual to support ALECs in accessing and interpreting the raw data, and also should provide a knowledgeable single point of contact with whom ALECs can confer to resolve questions about accessing the raw data. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 3b: Where, when, and in what format should BellSouth performance data and reports be made available?

POSITIONS

BST: Performance reports for all BellSouth SQMs are currently available electronically on a monthly basis at BellSouth's website. BellSouth commits to posting these reports by the 30th day after the month in which activity is reported. Although some parties advocate reporting within 20 days, this is not achievable due to the volume of information that must be reported. With regard to raw data, BellSouth will provide on the website all data underlying reports derived from BellSouth's Performance Measurement Analysis platform ("PMAP").

ALEC: Performance data and reports should be made available on an Internet web site in a format that can be accessed by use of standard database management tools such as Excel,

Access, or Oracle. The performance reports should be reported in a summarized spreadsheet format and include, at a minimum, those fields of information specified on the attached spreadsheet. (See Exhibit CLB-3) The performance data and reports should be made available by the 15th day of each month. If any data is excluded, BellSouth must be required to justify all exclusions before they are made. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 4a: Does the Commission have the legal authority to order implementation of a self-executing remedy plan?

POSITIONS

BST: BellSouth has agreed to voluntarily submit to the self-effectuating enforcement mechanism that is described in the testimony of its witnesses. The Commission has the legal authority to enter an order that is consistent with this voluntary agreement by BellSouth. The Commission does not have the legal authority to order a self-executing remedy plan that includes elements to which BellSouth does not agree.

ALEC: This issue will be addressed by counsel in greater detail in the ALEC Coalition's post-hearing brief. It is the ALEC Coalition's position, however, that the Commission does have the legal authority to order the implementation of a self-executing remedy plan under the Telecommunication Act of 1996, with or without BellSouth's consent. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Yes. In MCI v. BellSouth, 112 F. Supp. 2d 1286 (N.D.Fl., 2000), the United States District Court, Northern District of Florida rejected the proposition that this Commission has no authority to arbitrate a request for a performance measurement plan. Further, this Commission has recognized its authority to implement such policies on a generic basis rather than in individual arbitrations. Order No. PSC-99-1078-PCO-TP, issued May 26, 1999.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: The Commission is vested with jurisdiction over this matter pursuant to Sections 364.01(3) and (4)(g), Florida Statutes. Furthermore, 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.

ISSUE 4b: With BellSouth's consent?

POSITIONS

BST: See response to Issue 4(a).

ALEC: See response to Issue 4(a) (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: See response to Issue 4(a).

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes the same position set forth in Issue 4a.

ISSUE 4c: Without BellSouth's consent?

POSITIONS

BST: See response to Issue 4(a).

ALEC: See response to Issue 4(a) (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: See response to Issue 4(a).

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes the same position set forth in Issue 4a.

ISSUE 5a: Should BellSouth be penalized when BellSouth fails to post the performance data and reports to the Web site by the due date?

POSITIONS

BST: No. BellSouth should not be subjected to an automatic penalty for the late posting of a report. Unless a systematic failure to post reports occurs, there should be no penalties for late posting, particular if the tardiness is minor. It is not reasonable to assume that the deadlines can be made in every single instance, and there is no reason to believe that occasional late reporting is harmful to the ALECs or to the Commission.

ALEC: Yes. The ALECs' remedy plan calls for payments to be made when BellSouth is late posting performance data and/or associated reports. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 5b: If so, how should the penalty amount be determined, and when should BellSouth be required to pay the penalty?

POSITIONS

BST: As stated in the response to 5(a), there should be no penalty for occasionally missing the deadline to file performance data reports. If the Commission determines it is appropriate to assess such a penalty, the amount of the penalty proposed by the Staff (\$2,000 per day), would be reasonable if the \$2,000 per day applies to the aggregate of all reports and is not based on each individual report. Again, however, BellSouth does not believe that any penalty is appropriate.

ALEC: If performance data and/or associated reports are not available to the ALEC by the due date, BellSouth would be liable for payments, to a state fund, of \$5,000 for each day following the due date that the performance data and/or reports are not posted. BellSouth's payment amount is determined based upon the date the latest report is delivered to an ALEC. BellSouth should be required to make the penalty payment no later than the fifteenth (15th) day after the latest report is filed. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 6a: Should BellSouth be penalized if performance data and reports published on the BellSouth Web site are incomplete or inaccurate?

POSITIONS

BST: No, BellSouth should not be subjected to involuntary, automatic penalties for incomplete or inaccurate reports. First, it would be difficult to develop a workable definition of what precisely would be considered an "incomplete" or "inaccurate" report. Further, once reporting errors or omissions are discovered, they should be corrected as quickly as possible. Applying a penalty after an error is detected is inconsistent with this goal.

ALEC: Yes. The ALECs' remedy plan calls for payments to be made when the performance data and/or an associated report posted by BellSouth is incomplete and/or inaccurate. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 6b: If so, how should the penalty amount be determined, and when should BellSouth be required to pay the penalty?

POSITIONS

BST: As stated in response to 6(a), there should be no penalty. If the Commission determines it is appropriate to assess such a penalty, then BellSouth believes that the \$400 per day proposed by Staff is an appropriate amount, if this amount applies to the aggregate of all

reports and not to each incomplete or inaccurate report on an incremental basis. However, BellSouth reiterates that it does not believe the payment of any penalty is appropriate.

ALEC: If performance data and/or associated reports are inaccurate or incomplete, BellSouth would be liable for payments, to a state fund, of \$1,000 for each day following the original due date that complete and/or accurate performance data and/or associated reports are not posted. BellSouth's payment amount is determined based upon the date the latest complete and/or accurate report is delivered to an ALEC. BellSouth should be required to make the penalty payment no later than the fifteenth (15th) day after the latest report is filed. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 7: What review process, if any, should be instituted to consider revisions to the Performance Assessment Plan that is adopted by this Commission?

POSITIONS

BST: BellSouth concurs in the proposed review process set forth in the FPSC Staff Proposal (Section 3.0, Modifications to Measures).

ALEC: A collaborative work group, including ALECs, the Florida Public Service Commission and BellSouth, should be established to review the Performance Assurance Plan for additions, deletions and modifications. A review cycle

should start six months after the date of the Florida Public Service Commission's Order. BellSouth and the ALECs should file any proposed revisions to the Performance Assessment Plan one month prior to the beginning of each review period. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel has not proposed a definitive review process. Generally, however, to avoid the costly mistakes that occurred in other jurisdictions, Z-Tel urges the Commission to require that any performance assessment plan carefully define the metrics; to require that the plan be tested in the commercial market; and to retain the flexibility and authority to make ongoing adjustments as are needed. (Rubino)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 8: When should the Performance Assessment Plan become effective?

POSITIONS

BST: Assuming the Commission issues an Order by July 31, 2001, BellSouth can produce all data and measurements included in the BellSouth proposal during the fourth quarter of 2001. The enforcement portions of the performance assessment plan, however, should not become effective until after BellSouth receives 271 authority in Florida. The purpose of enforcement mechanisms is to ensure that there will be no "backsliding" after BellSouth enters the long distance market; therefore, implementation of penalties should not occur until BellSouth obtains interLATA relief in Florida.

ALEC: The remedy plan should go into effect as soon as it is ordered by the Commission so that the benefits of its effect on the marketplace can be realized. The plan can be used to measure compliance, so that the state regulators can make the appropriate recommendation to the FCC. Also, the systems can be tested and burned in prior to acceptance, so that backsliding can be discouraged, and/or prevented. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: The performance assessment plan should be placed into effect as quickly as possible. It is needed to protect and foster competition in the local exchange market, to the benefit of consumers, by ensuring that BellSouth will comply with the terms of interconnection agreements between BellSouth and ALECs. Accordingly, it should not be withheld until BellSouth receives authority to participate in the interexchange market. At the same time, experience with the plan gained prior to the 271 application will be valuable in gauging the efficacy of the plan and the degree to which BellSouth is providing nondiscriminatory service. (Ford)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 9: What are the appropriate Enforcement Measurement Benchmarks and Analogs?

POSITIONS

BST: The appropriate enforcement measurement benchmark and analogs are those set forth in the Exhibit DAC-1 to the testimony of BellSouth witness, David Coon, and summarized in Exhibit DAC-5

ALEC: Because the sub-measures proposed by the ALEC Coalition monitor key areas of ALEC and BellSouth activity, all sub-measures proposed are included in Tier 1 and Tier 2 of the ALEC Enforcement plan. The appropriate performance standards for the sub-measures are set forth in Exhibit KK-2 attached to Karen Kinard's direct testimony. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 10: Under what circumstances, if any, should BellSouth be required to perform a root cause analysis?

POSITIONS

BST: BellSouth should not be required under any circumstances to perform a root cause analysis. A root cause analysis is an expensive and time-consuming process that is not always necessary. BellSouth will have the information necessary to identify problems that may occur and the incentive (by virtue of the enforcement penalties) to correct these problems. There is no need for a formal, and time consuming, process necessarily required to perform root cause analysis.

ALEC: Root cause analysis is a useful procedure for building action plans for correcting unacceptable performance and should be incorporated within a performance measurement system. A root cause analysis should be required for any measure that fails twice in any 3 consecutive months in a calendar year. Performance of a root cause analysis, however, should not delay the payment of remedies for identified performance failures. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: The plan should contain a self-effectuating "root cause analysis" requirement that is triggered by repeated or severe discrimination. There is no reasonable basis on which to believe that enforcement of the provisions of the plan will be a sufficient incentive to lead BellSouth to initiate such an analysis. (Ford)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 11a: What is the appropriate methodology that should be employed to determine if BellSouth is providing compliant performance to an individual ALEC? (Tier 1)

POSITIONS

BST: The determination of whether BellSouth is providing "compliant performance" to an individual ALEC is identical to the determination of whether BellSouth is providing service at parity. The FCC has expressly defined parity. Where a retail analog exists, BellSouth must provide access to competing carriers in substantially the same time and manner as it provides to itself. For functions that have no retail analog, BellSouth must provide access that would allow an efficient carrier a meaningful opportunity to compete. This would be determined by the use of a benchmark.

ALEC: The ALECs' plan contains two calculation methods. The first remedy calculation methodology is applied to parity sub-measures. The second remedy calculation methodology is applied for benchmark sub-measures.

For parity sub-measures, Tier 1 payments are paid to individual ALECs if the difference in a given month

between BellSouth's performance for itself or affiliates and that which it provides to a particular ALEC exceeds the gap specified in the ALECs' remedy plan. Tier I has three levels of violations, depending upon the gap in performance between what BellSouth provides for itself or its affiliates and the performance it provides to ALECs. Once a sub-measure failure is determined, the calculated remedy should be a continuous function of severity of the failure.

When the benchmark serves as the performance standard, the measurement establishes a performance failure directly and assesses the degree to which performance departs from the standard. A performance failure should be declared if the calculated performance is not equal to or greater than the benchmark level. As performance becomes increasingly worse as compared to the benchmark, additional consequences will be incurred based upon the magnitude of non-compliance. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: The appropriate methodology is the modified Z-test, refined to incorporate either the "Delta function" or a floor to the Balancing Critical Value, as advocated by Z-Tel witness George Ford. Such a refinement is needed to overcome the deficiencies and shortcomings inherent in the basic BCV methodology that otherwise will lead to results absurdly biased against the ability to detect discrimination. (Ford)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 11b: How should parity be defined for purposes of the Performance Assessment Plan?

POSITIONS

BST: See response to Issue 11(a).

ALEC: The term "parity" refers to absolute equality of service.
(Bell)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: The term "parity" refers to absolute equality of service. While it may be desirable to adopt a statistical regime that departs from true parity for the purpose of accommodating the needs of a testing mechanism based on sampling, the Commission should bear the concept of true parity in mind and require that any departures from the objective be as limited as possible. (Ford)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 11c: 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?

POSITIONS

BST: The structure for Tier 1 enforcement should include clear predetermined measurements and standards that cover a comprehensive range of carrier-to-carrier performance. The enforcement plan should focus on the measurement of

key processes, i.e., those in which a failure could have a direct, significant effect on competition. It is not necessary to have a penalty associated with every measurement. The measurements that should be included in Tier 1 are set forth in Exhibit DAC-1.

11(c) 1: The appropriate statistical methodology to use is called the Truncated Z Method with error probability balancing.

11(c) 2: The appropriate parameter delta for Tier 1 is 1.0. BellSouth recommends utilizing this delta for an initial period of six months to see what results are produced, and upon analysis of these results, to set a permanent value.

11(c) 3: BellSouth's proposed remedy calculation (as set forth in Exhibit DAC-6) is the appropriate calculation. This is a transaction-based approach that, unlike the ALEC proposal, appropriately correlates the size of any penalty to the volume of transactions, and to the resulting impact of any failures.

11(c) 4: BellSouth proposed a 95% confidence Small Sample Size (as described in Exhibit DAC-6, Section B, p. 6).

11(c) 5: No. An artificial floor will inappropriately prevent the balancing critical value from changing as it should, with changes in sample size.

ALEC: The statistical methodology the ALECs recommend is the modified z statistic. For each parity sub-measurement, a disaggregated measure, BellSouth's performance for its retail operation, or that of its affiliates, is compared with the performance it provides to a given ALEC to create a z score (the modified z statistic), that can then be used to determine whether BellSouth's performance for an ALEC is in parity with its performance for its retail operation.

The value of the modified z statistic is compared with a pre-specified negative number, called the critical value.

The ALEC plan uses a principle called "balancing" to determine the critical value. The balancing critical value method equates the probability of a Type I error (under parity) with the probability of a Type II error for a specified alternative hypothesis. The parameter delta defines the degree of violation of parity (i.e., the alternative hypothesis) for which the probability of Type II error is balanced against the probability of Type I error under parity. The ALECs propose that this Commission adopt 0.25 or less as the parameter delta value for all sub-measures.

For small sample sizes, 30 or fewer observations in either of the data sets to be compared, permutation analysis is used to compute the z score. (See Exhibit RMB-2 to Dr. Bell's, "Permutation Analysis Procedural Steps").

A floor on the balancing critical value provides some protection against failing to trigger a remedy in the face of unequivocal, material disparity for measures with large sample sizes, when delta has been set too high. If delta is set at 0.50 or higher, this risk is clear enough that a floor on the balancing critical value should be used. Although the same danger theoretically exists for delta equal to 0.25, the value used in the joint ALEC plan, the danger is sufficiently small, at current samples sizes, so that a floor would not be necessary. Even at current sample sizes, however, a delta of 0.50 or 1.00 is problematic. (Bell Nos. 1-2)/(Bursh Nos. 3-5)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: 11(c) 1: The appropriate methodology is the modified Z-test, refined to incorporate either the "Delta function" or a floor to the balance and critical value, as advocated by Z-Tel witness George Ford. Such a refinement is needed to overcome the deficiencies and shortcomings inherent in the basic BCV that would otherwise lead to results absurdly biased against the ability to detect discrimination. (Ford)

11(c) 2: The appropriate parameter delta is that derived by the application of the "Delta function" advocated by Z-Tel witness George Ford. The "Delta function" is designed to vary delta with sample size and thereby avoid the prejudicial skewing of the balancing mechanism that can occur when mitigation is carried to unnecessary and counterproductive extremes. (Ford)

11(c) 3: Z-Tel adopts the position stated by the ALEC Coalition.

11(c) 4: Z-Tel adopts the position stated by the ALEC Coalition.

11(c) 5: A floor to the balancing critical value would be an acceptable alternative to the use of the "Delta function." While Z-Tel prefers the "Delta function, either alternative has the effect of preventing the excessive mitigation that can lead to a needlessly skewed test. Absent one adjustment or the other, the Balancing Critical Value methodology will too frequently yield absurdly low significance levels, which signify tests that are so biased as to be incapable of detecting a deviation from parity. (Ford)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 12a: What is the appropriate methodology that should be employed to determine if BellSouth is providing compliant performance on a statewide ALEC-aggregate basis? (Tier 2)

POSITIONS

BST: The determination of whether BellSouth is providing "compliant performance" on a statewide ALEC-aggregate basis is identical to the determination of whether

BellSouth is providing service at parity. The FCC has expressly defined parity. Where a retail analog exists, BellSouth must provide access to competing carriers in substantially the same time and manner as it provides to itself. For functions that have no retail analog, BellSouth must provide access that would allow an efficient carrier a meaningful opportunity to compete. This would be determined by the use of a benchmark.

ALEC: The same business rules used in Tier 1 apply to aggregate data of the individual ALECs under Tier 2, except that a different consequence threshold is used. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: See Z-Tel's position on 11.a. above.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 12b: How should parity be defined for purposes of the Performance Assessment Plan?

POSITIONS

BST: See response to Issue 12(a).

ALEC: See response to Issue 11(b). (Bell)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: See Z-Tel's position on 11.b. above.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 12c: 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?

POSITIONS

BST: As with Tier 1, the Tier 2 enforcement plan should include clear, preset measurements and standards that encompass a comprehensive range of carrier-to-carrier performance. Tier 2 enforcement mechanisms should focus specifically on those processes in which recurring failures could have a significant effect on the ALEC industry. The specific measurements that BellSouth proposes for inclusion in Tier 2 are set forth in Exhibit DAC-1.

12(c) 1: The appropriate statistical methodology to use is called the Truncated Z Method with error probability balancing.

12(c) 2: The appropriate parameter delta for Tier 2 is 0.5. BellSouth recommends utilizing this delta for an initial period of six months, to see what results are produced, and upon the analysis of these results, to set a permanent value.

12(c) 3: Tier 2 remedy calculations should be based on an indication of failure for three consecutive months. When a failure occurs for this period of time, the effected volumes for the three-month period should be averaged and then multiplied by the appropriate penalty fee on a per item basis.

12(c) 4: BellSouth proposed a 95% confidence Small Sample Size (as described in Exhibit DAC-6, Section B, p. 6).

12(c) 5: No. An artificial floor will inappropriately prevent the balancing critical value from changing, as it should, with changes in sample size.

ALEC: The same business rules used in Tier 1 for remedies apply to aggregate data of the individual ALECs under Tier 2, except that a different consequence threshold is used.

The Tier 2 remedy calculation includes a factor "n" in the calculation. This multiplier depends upon the openness of the local market to competition. In other words, "n" is based on ALEC market penetration levels. The value of "n" decreases as the number of ALEC served lines increases. This results in Tier 2 payments decreasing as the ALEC market penetration increases.

The application of the Benchmark Adjustment Table for Tier 1 remedy calculations is also appropriate for Tier 2 remedy calculations. (Bell Nos. 1-2)/(Bursh Nos. 3-5)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: See Z-Tel's position on 11.c. above.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 13: When should BellSouth be required to make payments for Tier 1 and Tier 2 noncompliance, and what should be the method of payment?

POSITIONS

BST: Both Tier 1 and Tier 2 payments should be made by check. Tier 1 payments should be made to the affected ALEC; Tier

2 payments should be made to the Florida State Treasury. For both Tier 1 and Tier 2, payment should be rendered at the end of the second month after the month for which the penalties are being paid (e.g., payment related to January performance would be made by the end of March).

ALEC: BellSouth should be required to make payment for Tier 1 and Tier 2 noncompliance by the 15th business day following the due date of the data and the reports upon which the remedies are based. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 14a: Should BellSouth be required to pay interest if BellSouth is late in paying an ALEC the required amount for Tier 1?

POSITIONS

BST: Yes. For Tier 1, BellSouth's penalty proposal provides for the payment of interest for each day BellSouth fails to make penalty payments pursuant to BellSouth's proposal under Issue 13.

ALEC: Yes. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 14b: If so, how should the interest be determined?

POSITIONS

BST: BellSouth should be required to pay the ALEC interest (at a rate of six percent simple interest (at a rate of six percent simple interest per annum) for each day after the due date that BellSouth fails to pay the ALEC.

ALEC: If BellSouth fails to remit a remedy payment as required, interest should be calculated as set forth in the Staff's Strawman Proposal. The key purpose of the interest payment for ALECs is to motivate BellSouth to pay applicable remedies by the due date and thereby allow the self-executing nature of the remedy plan to operate properly.

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 15: Should BellSouth be fined for late payment of penalties under Tier 2? If so, how?

POSITIONS

BST: No. BellSouth should not be subjected to a fine (in other words, an involuntary payment) for the late payment of penalties under Tier 2. However, BellSouth has voluntarily agreed to a payment to the Commission of

\$1,000 per day for each day that BellSouth's payment to the Commission of Tier 2 enforcement penalties is late.

ALEC: Yes. If BellSouth fails to remit a remedy payment under Tier 2 as required, BellSouth should be paid interest to be calculated as set forth in the Staff's Strawman Proposal.

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 16: What is the appropriate process for handling Tier 1 disputes regarding penalties paid to an ALEC?

POSITIONS

BST: BellSouth generally concurs with the proposal set forth in Mr. Stallcup's StrawMan proposal. BellSouth also proposes the addition of provisions to discourage the submission of frivolous disputes.

ALEC: When an ALEC and Bellsouth are unable to reach a mutually agreeable settlement pertaining to the penalties paid, the Commission should settle the dispute. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 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?

POSITIONS

BST: BellSouth agrees with the proposal set forth in the testimony of Mr. Stallcup.

ALEC: The Commission should have an independent auditing and accounting firm certify, on a random basis, that all the penalties under Tier I and Tier II Enforcement Mechanisms are properly and accurately assessed and paid in accordance with Generally Accepted Accounting Principles. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 18: What limitation of liability, if any, should be applicable to BellSouth?

POSITIONS

BST: BellSouth agrees with the Staff Proposal, which includes limitations of liability for events such as the submission of orders in unreasonable quantities, findings of noncompliance that are attributable to an ALEC, and an ALEC's noncompliance with its interconnection agreement.

ALEC: ALECs do not support an absolute cap on BellSouth's liability for remedy payments. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: The procedural cap should be 39% of net revenues. To adopt an absolute cap would be to remove any incentive to adhere to standards beyond that point. (Ford)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 19a: What type of cap, if any, is appropriate for inclusion in the Performance Assessment Plan?

POSITIONS

BST: The appropriate cap is an absolute one, as proposed by BellSouth. The "procedural cap" supported by some parties is really not a cap at all, but rather a threshold amount that must be reached before the process of setting a cap would begin. This procedural cap is inconsistent with the goal of making the plan self-effectuating. Also, BellSouth's voluntary plan includes an absolute cap because BellSouth's potential liability to ALECs should not be so great that it jeopardizes BellSouth's ability to serve all of its customers. Liability of this magnitude could be caused by an uncapped plan.

ALEC: A review threshold or "procedural cap" that allows for a regulatory hearing when a certain level of remedy payments is exceeded may be appropriate. A procedural cap would establish a preset level at which BellSouth could seek regulatory review of the remedy payments that are due. However, the procedural cap would not automatically absolve BellSouth of liability for remedy payments. BellSouth should continue to make payments into a designated account until the Commission determines whether BellSouth has presented sufficient justification

for not paying remedies in excess of the procedural cap.
(Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: A procedural cap, rather than an absolute cap is the appropriate choice. An absolute cap would serve only to remove any motivation to comply once that limit has been reached. (Ford)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 19b: What is the appropriate dollar value of a cap if applicable?

POSITIONS

BST: It is not appropriate to have a set dollar amount for the absolute cap. Instead, the absolute cap should be 36 percent of BellSouth's net operating revenues of its Florida operations. Having a percentage cap will allow the amount of the cap appropriately to increase or decrease based on existing circumstances.

ALEC: The 39% procedural cap in the StrawMan Proposal is reasonable. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: A dollar value equal to 39% of net revenues is appropriate. (Ford)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 20: What process, if any, should be used to determine whether penalties in the excess of the cap should be required?

POSITIONS

BST: The only appropriate cap is an absolute cap. Accordingly, there should be no penalties in excess of that cap.

ALEC: BellSouth would have the burden of showing, by clear and convincing evidence, that the remedies due in excess of the procedural cap are unwarranted. The Commission would then decide whether and to what extent the amount in excess of the procedural cap should be paid out. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 21: If there is a cap, for what period should the cap apply?

POSITIONS

BST: The cap should be applied on an annual basis.

ALEC: The procedural cap should apply on a rolling twelve-month basis for the life of the enforcement plan. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 22: Should the Performance Assessment Plan include a Market Penetration Adjustment, and if so how should such an adjustment be structured?

POSITIONS

BST: No. A Market Penetration Adjustment would unfairly penalize BellSouth for an ALEC's business decisions not to include Florida in the ALEC's initial entry level strategy.

ALEC: The Tier 2 remedy calculation includes a factor "n" in the calculation. This multiplier depends upon the openness of the local market to competition. In other words, "n" is based on ALEC market penetration levels. The value of "n" decreases as the number of ALEC served lines increases. This results in Tier 2 payments decreasing as the ALEC market penetration increases. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 23: Should the Performance Assessment Plan include a Competitive Entry Volume Adjustment, and if so how should such an adjustment be structured?

POSITIONS

BST: No. The competitive entry volume adjustment should be rejected for two reasons. One, although it is intended to provide protection for small ALECs, the criteria to apply the adjustment is based on the number of transactions, which means that an ALEC of any size would be subject to this adjustment if it has a small number of transactions. Two, the proposed plan would apply the penalty to transactions at the "submeasure" level. This means that transactions would be broken down to sub-metrics and the adjustment would be applied at this level. A large number of actual transactions could be broken down into an extremely large number of sub-metric components, within measurement categories, with a small number of transactions in each category, which would result in the penalty being applied inappropriately.

ALEC: For a transaction-based plan, such as that proposed by BellSouth, payments on a per transaction basis will be too small to incest BellSouth to behave in a nondiscriminatory manner. As a result, nascent services or embryonic ALECs would be most negatively affected by a transaction-based plan. In an attempt to address this inadequacy, a market penetration adjustment is necessary. (Bursh)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Yes, if a transactions-based payment method is used, there should be a Competitive Entry Volume Adjustment in the form of a minimum payment. (Ford)

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 24a: Should periodic third-party audits of Performance Assessment Plan data and reports be required?

POSITIONS

BST: Yes, within reason. BellSouth believes that third-party audits of Performance Assessment Plan data and reports are appropriate. Because BellSouth's measurement data is produced by a regional system and managed by a regional organization, audits should be conducted regionally whenever possible.

ALEC: Yes. Comprehensive annual audits of reporting methodology and accuracy of data are required. In addition, BellSouth's adherence to metric change control policies should be reviewed as the lack of follow-through on such policies would thwart the replication of past metric reports. The audit should cover all reporting procedures and reportable data and should include all systems, processes and procedures associated with the production and reporting of performance measurement results. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 24b: If so, how often should audits be conducted, and how should the audit scope be determined?

POSITIONS

BST: BellSouth will agree to undergo a comprehensive audit of the current year aggregate level reports for both BellSouth and the ALECs for each of the next five years. BellSouth, the PSC and the ALECs should jointly determine the scope of the audits.

ALEC: A comprehensive audit should be conducted every twelve months, with the first such audit commencing twelve months after the conclusion of the KPMG OSS Test's metric replication. The audit scope should be determined in an audit process that is open to ALECs. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 25: If periodic third-party audits are required, who should be required to pay the cost of the audits?

POSITIONS

BST: The cost of these audits should be borne 50% by BellSouth and 50% by the ALEC or ALECs.

ALEC: Costs for these annual audits should be borne by BellSouth. BellSouth is the dominant market provider with the incentive and ability to discriminate. To ensure that BellSouth's reporting is accurate and trigger remedies designed to curb its incentives to discriminate, comprehensive annual audits are critical. This assurance should come at the incumbent's expense. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 26: Who should select the third-party auditor if a third-party audit is required?

POSITIONS

BST: The independent third party auditors should be selected based upon input from BellSouth, the PSC (if applicable), and the ALECs.

ALEC: BellSouth and the ALECs should jointly select the third-party auditor. If the parties cannot agree on the auditor, the Commission should determine the auditor. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 27a: 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?

POSITIONS

BST: No. BellSouth provides ALECs with the raw data that underly many of the BellSouth service quality measure reports, and also provides a manual that describes how this data may be used by the ALECs. The ALECs can use the raw data to validate the results of the BellSouth service quality measurement reports posted on the BellSouth website.

ALEC: Yes. When an ALEC has reason to believe the data collected for a measure is flawed or the reporting criteria for the measure is not being adhered to, it should have the right to have a mini-audit performed on the specific measure/sub-measure upon written request (including e-mail), which will include the designation of an ALEC representative to engage in discussions with BellSouth about the requested mini-audit. If, thirty days after the ALEC's written request, the ALEC believes that the issue has not been resolved to its satisfaction, the ALEC should be able to commence the mini-audit upon providing BellSouth five business days advance written notice. Additional details describing the mini-audit process can be found in Karen Kinard's direct testimony. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 27b: If so, should the audit be performed by an independent third party?

POSITIONS

BST: No. Additional audits beyond the yearly comprehensive audit discussed under Issue 24 are not necessary.

ALEC: Although there may be cases in which the ALECs and BellSouth could jointly review certain metric reporting issues with Commission oversight, in most cases an unbiased third-party would be the best choice as an auditor. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 28: Should BellSouth be required to retain performance measurement data and source data, and if so, for how long?

POSITIONS

BST: The data that is maintained by the PMAP system should be retained for a period not to exceed eighteen months. The retention of this data for longer than eighteen months would result in large and burdensome costs to BellSouth.

ALEC: Yes. Performance measurement data and source data should be retained for 18 months or as required to audit BellSouth's performance. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 29: What is the appropriate definition of "affiliate" for the purpose of the Performance Assessment Plan?

POSITIONS

BST: The term affiliate is defined in the Telecommunications Act. The real issue, however, is not how the term

"affiliate" should be defined, but whether there are circumstances in which BellSouth's performance related to its transactions with its affiliates should be considered in the context of the performance assessment plan.

ALEC: The affiliate reporting should include all affiliates that purchase wholesale services from BellSouth and the term affiliate should be defined pursuant to the Telecommunications Act definition. Section 3(1) of the Communications Act defines affiliate as follows: "The term 'affiliate' means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10%." (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 30a: Should BellSouth be required to provide "affiliate" data as it relates to the Performance Assessment Plan?

POSITIONS

BST: If affiliate data is required, the only BellSouth affiliate data that should be reported is that which reflects the provision of wholesale services from BellSouth to a BellSouth-affiliated ALEC. This is the data that should be used to do an "apples-to-apples" type comparison that would be useful for parity purposes. As with all other ALECs, BellSouth will produce measurements for its ALEC, and this information will be provided to

the Commission in the form of periodic performance reports. The Commission, however, should not require that this information be used at this time to develop measurements or in the context of Tier 1 or Tier 2 compliance and, in fact, the Commission need not take any action with regard to this data. If the Commission deems it appropriate to monitor this data, BellSouth would not object to this approach

ALEC: Yes. BellSouth should report monthly any affiliate activity for the metrics adopted in this proceeding. BellSouth should include all affiliates that buy interconnection or unbundled network elements or that resell BellSouth's services. The affiliate information should be reported separately by each affiliate (data, wireless, future long distance, or other) with activity in the metric category. BellSouth may exclude the number of affiliate observations from data reported to individual ALECs but not in data reported to the Commission. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

ISSUE 30b: 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?

POSITIONS

BST: See response to Issue 30(a).

ALEC: Data should be reported for several months before a decision is made on giving up set benchmarks for parity comparisons with the ALEC. BellSouth's affiliates may have different service delivery plans or not have enough activity yet to make it an appropriate and dependable analog for parity comparisons. If the affiliate is deemed in a future collaborative as an appropriate retail analog, ALECs may choose either to adopt a standard of parity with the affiliate or choose to use an existing benchmark, perhaps updated periodically based on historical affiliate treatment during the study period. (Kinard)

KMC: KMC adopts the position of the ALEC Coalition.

ZTEL: Z-Tel adopts the position stated by the ALEC Coalition.

E.SPIRE: E.spire concurs with the positions offered by the ALEC Coalition.

IDS: IDS adopts the position of the ALEC Coalition.

STAFF: Staff takes no position at this time.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct/Rebuttal</u>			
Paul W. Stallcup	Staff	PWS-1	Performance Assessment Plan
Karen Kinard	ALEC	KK-1	Arguments for ALEC Business Rule Changes
	ALEC	KK-2	ALEC Proposed Disaggregation (Process Level)

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Karen Kinard	ALEC	KK-3	ALEC Performance Standards by Measure
	ALEC	KK-4	Additional Measures Proposed by ALECs
	ALEC	KK-5	Additional Proposed Business Rule Changes
David A. Coon	Bellsouth	DAC-1	BellSouth Service Quality Measurement Plan
	Bellsouth	DAC-2	BellSouth's Performance Measurements Analysis Platform
	Bellsouth	DAC-3	Comparison of Service Quality Measurements
	Bellsouth	DAC-4	Disaggregation and Analog/Bench- mark Comparison
	Bellsouth	DAC-5	Comparison of Enforcement Measurements

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
David A. Coon	Bellsouth	DAC-6	Fee Schedule Per Affected Item
	Bellsouth	DAC-R1	Quality of Sub-Metrics
	Bellsouth	DAC-R2	BellSouth Sub- Metrics
Dr. Edward J. Mulrow	Bellsouth	E.M.-1	Louisiana SQM Reports
Cheryl Bursh	ALEC	CLB-1	Performance Incentive Plan, Version 2.0
	ALEC	CLB-2	Sample Benchmark Adjustment Table
	ALEC	CLB-3	Sample ILEC PM Results Summary Report
Dr. Robert M. Bell	ALEC	RMB-1	Local Competition Users Group Report "Statistical Tests for Local Service Parity"
	ALEC	RMB-2	Permutation Analysis Procedural Steps
Dr. George S. Ford	ZTEL	GSF-1	Histogram of the ModZ

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Dr. George S. Ford	ZTEL	GSF-2	Type II Error at the 5% Significance Level
	ZTEL	GSF-3	Location of the Alternative Distribution with Different Delta Values
	ZTEL	GSF-4	The Implicit Delta Value with a BCV Ceiling
	ZTEL	GSF-5	Allowable ALEC Means
	ZTEL	GSF-6	Data for Florida from ARMIS 43-01
	ZTEL	GSF-7	Balancing Critical Value Comparison
	Ronald M. Pate	Bellsouth	RMP-1
Bellsouth		RMP-2	BellSouth Change Control ProcessGuide, Version 2.1
Bellsouth		RMP-3	The February 1999 letter from FCC's Common Carrier Bureau Chief

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Ronald M. Pate	Bellsouth	RMP-4	Flow-Through Matrix Excerpt from Florida Interim Performance Matrix
Dr. William E. Taylor	Bellsouth	WET-1	Curriculum Vitae

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XI. PENDING MOTIONS

On April 11, 2001, IDS Telecom, LLC filed its Motion to Accept Supplemental Direct Testimony of Keith Kramer and to Permit the Withdrawal of the Direct Testimony of William Gulas. Because the time to respond to the Motion has not run, no ruling will be made at this time. IDS's Motion will be ruled on in a separate order.

XII. PENDING CONFIDENTIALITY MATTERS

On April 10, 2001, BellSouth filed its Notice of Intent to Request Specified Confidential Classification.

XIII. RULINGS

1. E.spire Communications, Inc. (e.spire) filed a Motion to Accept Late Filed Prehearing Statements. Noting no objection, e.spire's Motion is granted.

2. Staff filed a Motion to Extend Discovery Cutoff Date. Noting no objection, staff's Motion is granted.

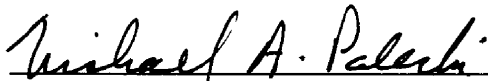
3. KMC Telecom, Inc. (KMC) and Intermedia Communications, Inc. (Intermedia), requested that they be excused from the prehearing in this proceeding. Noting no objection, KMC's and Intermedia's requests for leave to be excused are granted.

4. Rhythms Links requested that it be excused from the prehearing and hearing in this proceeding. Noting no objection, Rhythms Links' request for leave to be excused is granted.

It is therefore,

ORDERED by Commissioner Michael A. Palecki, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Michael A. Palecki, as Prehearing Officer, this 19th day of April, 2001.



MICHAEL A. PALECKI
Commissioner and Prehearing Officer

(S E A L)

JKF

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.