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4092 South Memorial Parkway ▶ Huntsville, AL 35802 ▶ 1-256-382-3900

April 6, 2000

VIA OVERNIGHT MAIL

Blanco Bayo  
Director – Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**RE: Docket No. 000121-TP – Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies**

Dear Ms. Bayo:

Enclosed for filing is the original and four (4) copies of ITC^DeltaCom Communications, Inc.'s ("ITC^DeltaCom") Comments in Docket No. 000121-TP. Please acknowledge receipt of this filing by date-stamping the extra copy labeled "return receipt" and returning it to me in the self-addressed, stamped envelope provided for this purpose.

Should you have any questions or require additional information, please contact me at (256) 382-3864.

Sincerely,

*Brian Musselwhite*  
Brian Musselwhite  
Regulatory Manager

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Investigation into the establishment of operations )  
support systems permanent performance measures for ) Docket No. 000121-TP  
incumbent local exchange telecommunications companies )

COMMENTS OF ITC^DELTA COM

ITC^DeltaCom Communications, Inc. ("ITC^DeltaCom") hereby files these comments regarding the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.

I. INTRODUCTION

In response to the Florida Public Service Commission ("the Commission") notice of staff workshop in the above referenced docket, issued March 9, 2000, ITC^DeltaCom respectfully submits the following comments in lieu of a formal presentation at the workshop. First, ITC^DeltaCom is pleased that the Commission has established this docket on permanent performance measures. The importance of established performance measures coupled with strong remedies for poor performance cannot be emphasized enough. The quality of service that ITC^DeltaCom, and all competitive local exchange carriers ("CLECs"), receives from incumbent local exchange carriers ("ILECs") has a direct bearing on the quality of service that ITC^DeltaCom can provide to its customers. As such, performance measures should be designed to set forth the minimum level of service quality that the ILEC should be required to provide. Such measures will provide ILECs, CLECs and the Commission with a clear understanding of the baseline acceptable

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level of performance. However, in order for the performance measures to be useful, performance remedies “with teeth” must accompany the performance measures. ITC^DeltaCom believes that a strong set of performance measures and remedies is critical to opening the local exchange markets to competition where consumers can choose among providers without fear of service outages or degraded service. In addition, if ILECs are required to provide a baseline level of service quality to CLECs, the ILECs will most likely strive to provide at least that level of service to its own retail customers. Without established performance measures and remedies, however, ITC^DeltaCom, and all CLECs, are subject to uncertainty in the marketplace and consumers are at increased risk of service outages and service degradation.

## **II. AUTHORITY**

ITC^DeltaCom believes that the Commission has the authority to set performance standards on the level of service that ILECs provide through Operations Support Systems. Chapter 364, Florida Statutes, provides the Commission with ample authority to establish service quality standards that ILECs must provide to CLECs. In Section 364.01(1), Florida Statutes, the Legislature conferred upon the Commission the responsibility to exercise its authority over competition. In Section 364.01(3), Florida Statutes, the Legislature found:

*...that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition...*

In addition, the Legislature found that:

*...the changes in regulations allowing increased competition in telecommunications services could provide the occasion for increases in the telecommunications work force; therefore, it is in the public interest that*

competition in telecommunications services lead to a situation that enhances the high-technological skills and the economic status of the telecommunications workforce. *Id.*

Further, Section 364.01(4)(g), Florida Statutes, requires the Commission to “[E]nsure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior...” Finally, the Commission has the authority under Section 364.285, Florida Statutes, to enforce established performance measures. Section 364.285, Florida Statutes, states in relevant part that the Commission is empowered to:

impose upon any entity subject to its jurisdiction under this chapter which is found to have refused to comply with or to have willfully violated any lawful rule or order of the commission or any provision of this chapter a penalty for each offense of not more than \$25,000, which penalty shall be fixed, imposed and collected by the commission; or the commission may, for any such violation, amend, suspend, or revoke any certificate issued by it.

Performance measures and remedies will allow the Commission to fulfill its responsibility to promote competition, protect consumers, increase high-tech jobs and prevent anti-competitive behavior. For example, companies like ITC^DeltaCom are creating many new high-tech jobs in Florida and investing millions of dollars in telecom infrastructure. The improved telecom infrastructure in turn attracts more new businesses. In addition, as more competitors enter the market consumers’ benefit with more choices, lower prices and greater diversity in products and services. However, telecom investment and competition in Florida may be slow, if not stymied, unless the Florida markets are hospitable to competition. Thus, to protect consumers against potential service affecting issues, encourage the deployment and investment in *network infrastructure and open the local markets to unfettered competition* the Commission should establish strong performance measures and remedies pursuant to

its authority under Chapter 364, Florida Statutes.

ITC^DeltaCom would note, however, that in addition to the Commission's authority and obligation under Chapter 364, Florida Statutes, the Commission has authority under the Telecommunications Act of 1996 to establish and enforce ILEC performance. This authority is derived from Sections 251 and 252 of the Act, which provide state Commissions with the authority to arbitrate and approve interconnection agreements. In fact, under this authority, the FCC has encouraged states to impose penalties on an ILEC within the context of an arbitration award when the ILEC fails to perform. FCC Docket No. 98-147, Third Report and Order, Docket No. 96-98, Fourth Report and Order, p.76, Paragraph 176 (December 9, 1999). The FCC stated:

We encourage states to establish penalties for failure to meet provisioning intervals as part of any arbitration award. The state could use the provisioning intervals it establishes as a measure to determine whether the incumbent LEC has failed to comply with its section 251 (c) (3) unbundling obligations, even if the state has already taken action on prior violations by the same incumbent LEC, with respect to the same central office or the same competing carrier. We encourage states to consider adoption of self-executing remedies to minimize litigation in this area.

Therefore, the Commission can address performance measures and self-effectuating remedies under federal law. In addition, the federal courts have made strong pronouncements in support of performance measures and remedies:

Inadequate service can be fatal to a new local exchange carrier such as TCG. If prospective customers try TCG service only to discover that they cannot reliably obtain a dial tone, that calls are disconnected in the middle of a conversation, or that service orders are not timely filled, then those customers will probably switch back to U.S. West and turn a deaf ear to future entreaties from TCG. Adverse publicity will also deter other prospective customers from considering TCG. Even assuming the problems

are eventually resolved, that may not be soon enough to save TCG. Moreover, damages in such cases can be difficult to quantify and prove, and it would require years (and considerable expense) to litigate such claims. A further concern is that U.S. West stands to gain financially if customers become dissatisfied with TCG's local service, hence U.S. West is operating under a conflict of interest.

Under the totality of the circumstances, including the PUC's extensive experience in overseeing U.S. West service in Oregon, the PUC could reasonably conclude that enforceable performance standards, i.e., those with teeth, are necessary and proper. Even if no damages are ever paid, the very existence of enforceable standards may help to reassure TCG (and other prospective CLECs) who might otherwise be hesitant to enter the local telephone market, and to minimize the suspicions and accusations that might otherwise arise between TCG and U.S. West. The PUC also could reasonably have concluded that the liquidated damages clause would help to minimize costly litigation.

*U.S. West Communications, Inc. v. TCG Oregon*, 31 F. Supp.2d 828, 837-38 (D.Or. 1998).

### **III. ESTABLISHMENT OF STANDARDS**

ITC^DeltaCom encourages the Commission to immediately establish performance measures and remedies either through rules or by Commission Order for BellSouth, Sprint and GTE. The established rules or Commission Order should require the ILECs to report results on performance standards on a monthly basis. In addition, the Commission should require the ILECs to report the performance results on both an aggregate and individual CLEC basis, statewide. Further, when an ILEC fails to meet the established benchmark for a particular measure during a month, the Commission should require that the ILEC, within 15 business days, prepare and provide to the affected CLEC(s) and the Commission a remedial plan that specifies and schedules the steps the ILEC will take to determine and remedy the particular performance deficiency.

#### **IV. PERFORMANCE REMEDIES**

Performance measures and remedies provide a tool to determine whether CLECs have a meaningful opportunity to compete, and thus, whether they can, in turn, provide quality local exchange service to their customers. Specific benchmarks set forth in the performance measurements should provide ILECs with a clear achievable goal, while remedies should be severe enough to provide ILECs with the necessary incentive to meet the specified benchmarks. The use of performance measures and remedies will allow all parties, including the Commission, to know what level of service is expected and achieved. Failure to meet a specified benchmark in any month should result in the remedy being applied within 30 days of reporting the measure. If such a failure occurs, the ILEC should be required to not only comply with the remedy associated with the performance measure, but, as stated above, to also prepare and provide a remedial plan that specifies and schedules the steps the ILEC will take to determine and remedy the particular performance deficiency. By identifying the cause of the failure to meet the specified benchmark, and subsequently taking action to correct the problem, all parties, and most importantly consumers, benefit.

#### **V. CONCLUSION**

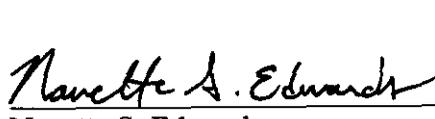
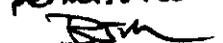
Performance measurements and remedies should be adopted that provide a true assessment of whether ILEC's currently provide, and continue to provide, CLECs parity and a meaningful opportunity to compete in the local exchange market. ITC^DeltaCom submits that adopting performance measures and remedies "with teeth" for ILECs will ensure that CLECs can provide quality service to local exchange customers in the state of Florida. Therefore, ITC^DeltaCom

respectfully requests the Commission to move quickly to establish permanent performance measures and remedies in this docket.

WHEREFORE, ITC^DeltaCom respectfully submits these comments to the Commission for consideration.

Respectfully submitted this 7<sup>th</sup> day of April 2000.

Sincerely,

 / *with express permission*  
  
Nanette S. Edwards  
Senior Manager - Regulatory Attorney  
ITC^DeltaCom Communications, Inc.  
4092 S. Memorial Parkway  
Huntsville, AL 35802

**CERTIFICATE OF SERVICE**

This is to certify that I have served a copy of the foregoing Comments of ITC^DeltaCom Communications, Inc., d/b/a ITC^DeltaCom upon the following parties of record by first class mail, on this the 6th day of April, 2000.

AT&T  
Marsha Rule  
101 North Monroe Street, Suite 700  
Tallahassee, FL 32301-1549  
Phone: (850) 425-6365  
Fax: 425-6361

BellSouth Telecommunications, Inc.  
Ms. Nancy B. White  
c/o Nancy H. Sims  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301-1556  
Phone: (850) 224-7798  
Fax: 222-8640

Florida Cable Telecommunications Assoc., Inc.  
Michael A. Gross  
310 N. Monroe St.  
Tallahassee, FL 32301  
Phone: 850-681-1990  
Fax: 681-9676  
EMail: mgross@fcta.com

Florida Public Telecommunications Assoc.  
Angela Green, General Counsel  
125 S. Gadsden St., #200  
Tallahassee, FL 32301-1525  
Phone: 850-222-5050  
Fax: 222-1355

GTE Florida Incorporated  
Kimberly Caswell  
P.O. Box 110, FLTC0007  
Tampa, FL 33601-0110  
Phone: (813) 483-2617  
Fax: (813) 223-4888

MCI WorldCom

Ms. Donna C. McNulty  
325 John Knox Road, Suite 105  
Tallahassee, FL 32303-4131  
Phone: (850) 422-1254  
Fax: 422-2586

MediaOne Florida Telecommunications, Inc.

c/o Laura L. Gallagher, P.A.  
101 E. College Ave., Suite 302  
Tallahassee, FL 32301  
Phone: 850-224-2211  
Fax: 561-6311

Messer Law Firm

Floyd Self  
P.O. Box 1876  
Tallahassee, FL 32302  
Phone: 850-222-0720  
Fax: 224-4359

Pennington Law Firm

Peter Dunbar/Karen Camechis  
P.O. Box 10095  
Tallahassee, FL 32302-2095  
Phone: 850-222-3533  
Fax: 222-2126  
EMail: [Pete@penningtonlawfirm.com](mailto:Pete@penningtonlawfirm.com)

Represents: Time Warner

Rutledge Law Firm  
Kenneth Hoffman/John Ellis  
P.O. Box 551  
Tallahassee, FL 32302-0551  
Phone: 850-681-6788  
Fax: 681-6515

Supra Telecom

Mrs. Doris M. Franklin  
1311 Executive Center Drive, Suite 200  
Tallahassee, FL 32301  
Phone: (850) 402-0510  
Fax: 402-0522

Time Warner Telecom of Florida, L.P.  
Ms. Carolyn Marek  
233 Bramerton Court  
Franklin, TN 37069  
Phone: (615) 376-6404  
Fax: (615) 376-6405  
Represented by: Pennington Law Firm

Nanette S. Edwards / with express  
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BSM