



Andrew Isar, Director — State Affairs  
aisar@millerisar.com

Via Two Day Delivery

November 13, 2000

Division of Records and Reporting  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

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RECORDS AND REPORTING

RE: BellSouth Performance Assurance Plan Penalties, Docket 000121-TP

The Association of Communications Enterprises (ASCENT), on behalf of its members and in response to the Commission's request for comment regarding Staff's proposed BellSouth Performance Assurance Plan (PAP) in the above-referenced matter, expresses its general support of Staff's proposed PAP and its approach. The importance of adopting a meaningful performance plan and penalties that will serve as a strong compliance incentive for BellSouth, rather than a "cost of business" for impeding its competitors' efforts, cannot be over emphasized. While ASCENT hopes that BellSouth will serve its wholesale subscribers effectively and pay no penalties, the reality remains that in the absence of competitive market incentives, BellSouth must be bound to financial incentives that will compel responsible service. Staff's proposed PAP takes an important step toward creating a meaningful performance plan.

From an economic perspective, the purpose of any PAP that is ultimately adopted is to ensure that BellSouth does not engage in anticompetitive behavior and to provide an incentive for BellSouth to perform reliably. These objectives can only be achieved if the magnitude of the financial consequences of discriminatory behavior by BellSouth is greater than the expected value of the gains that BellSouth will be able to earn through calculated performance. For example, the Federal Communications Commission (FCC) noted of the Texas PAP that its penalties "would discourage anti-competitive behavior by setting the damages and penalties at a level above the simple cost of doing business."<sup>1</sup> But the proverbial devil is in the details.

The structuring of penalties is as important as the penalties themselves. Efforts to cap penalties or to otherwise limit penalties on a regional basis, by measure, by period, by type of non-performance, or in any manner that mitigates the effect of substandard performance, as several incumbents now argue must be incorporated into PAPs, would dilute what could otherwise appear to be substantial penalties. By refusing to impose such penalty caps, Staff's proposed plan succeeds in creating a more effective financial

<sup>1</sup> Bell Atlantic New York Order 15 FCC Rcd at 4166-67, ¶433. ASCENT maintains, however, that the Texas PAP's penalties fall far short of discouraging Southwestern Bell Telephone's substandard performance.

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP 3 \_\_\_\_\_
- COM 4 \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR Stallcup \_\_\_\_\_
- LEG Vaccaro \_\_\_\_\_
- OPC \_\_\_\_\_
- PAI \_\_\_\_\_
- RGO Harvey \_\_\_\_\_
- SEC \_\_\_\_\_
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

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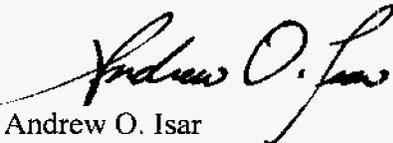
incentive for reliable performance. The increase in penalty severity for continued non-performance coupled with the proposed payment of penalties to competitors who are most impacted by BellSouth non-performance under the proposed Tier 1 payment proposal, is entirely appropriate. These aspects of the proposed plan, in particular, will preclude BellSouth from gaming the process through a limitation of penalties and potential protracted penalty payments to wholesale subscribers.

The FCC in its June Texas 271 Order<sup>2</sup> drew on its Bell Atlantic-New York's 271 application experience, when reiterating the elements of an effective PAP that fell into a "zone of reasonableness" and were likely to provide sufficient incentives to foster post-entry checklist compliance. Citing to its Bell Atlantic - New York 271 order, these key elements include: 1) a potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; 2) clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; 3) a reasonable structure that is designed to detect and sanction poor performance when it occurs; 4) a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and 5) reasonable assurances that the reported data is accurate.<sup>3</sup> Staff's PAP contains these elements.

ASCENT generally supports the proposed penalty and payment structure of Staff's proposed plan. The direction taken by Staff will create the necessary incentives for BellSouth to meet its market opening obligations, and assurances that competitors will be able to serve their customers reliably when obtaining underlying services, facilities, and interconnection from BellSouth. ASCENT urges the Commission to support Staff's approach for BellSouth performance assurance.

Sincerely,

Association of Communications Enterprises



Andrew O. Isar

Cc: Service List

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<sup>2</sup> *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, CC Docket 00-65, Memorandum Opinion and Order (June 30, 2000) ["Texas 271 Order"], at ¶422 *et seq.*

<sup>3</sup> *Bell Atlantic New York Order* at ¶433.

**State of Florida**

**Florida Public Service Commission**

In the Matter of BellSouth ) Docket 000121-TP  
Performance Assurance )  
Plan Penalties. ) November 13, 2000

CERTIFICATION

This is to certify that on November 13, 2000, an original and fifteen (15) copies of the Comments of the Association of Communications Enterprises in the matter of BellSouth Performance Assurance Plan Penalties have been sent via two day express delivery to the Division of Records and Reporting, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, FL 32399-0850, and copies of the foregoing have been mailed via first class mail, postage prepaid to :

- *ALLTEL Communications, Inc.*  
*c/o Ausley Law Firm*  
*Jeffrey Wahlen*  
*P.O. Box 391*  
*Tallahassee, FL 32302*  
*Phone: 850-425-5471*  
*Fax: 222-7952*
  
- \*  
  
*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*
  
- *Birch Telecom of the South, Inc. (NC)*  
*Monica Barone*  
*8001 Fairlake Drive*

Wake Forest, NC 27587  
Phone: (919) 562-3069

Covad Communications Company  
Catherine F. Boone, Esq.  
Regional Counsel  
10 Glenlake Parkway, Suite 650  
Atlanta, GA 30328-3495  
Phone: 678-579-8388  
Fax: 240-525-5673  
EMail: [cboone@covad.com](mailto:cboone@covad.com)  
Represented by: Katz, Kutter Law Firm

• \*

Florida Cable Telecommunications Assoc., Inc.  
Michael A. Gross  
246 E. 6th Avenue  
Tallahassee, FL 32303  
Phone: 850-681-1990  
Fax: 681-9676  
EMail: [mgross@fcta.com](mailto: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

Intermedia Communications, Inc.  
Mr. Scott Sapperstein  
3625 Queen Palm Drive  
Tampa, FL 33619-1309  
Phone: (813) 829-4093  
Fax: (813) 349-9802  
Represented by: Katz, Kutter Law Firm

• \*

ITC^Deltacom  
Nanette Edwards/Brian Musselwhite  
4092 South Memorial Parkway  
Huntsville, AL 35802  
Phone: (256) 382-3856  
Fax: (256) 382-3936

• \*

Katz, Kutter Law Firm  
Charles Pellegrini/Patrick Wiggins  
12th Floor

106 East College Avenue  
Tallahassee, FL 32301  
Phone: 850-224-9634  
Fax: 222-0103  
Represents: Intermedia, Covad Communications

• \*

Kelley Law Firm  
Jonathan Canis/Michael Hazzard  
1200 19th St. NW, Fifth Floor  
Washington, DC 20036  
Phone: 202-955-9600  
Fax: 202-955-9792  
Email: [jacanis@kelleydrye.com](mailto:jacanis@kelleydrye.com), [mhazzard@kelleydrye.com](mailto:mhazzard@kelleydrye.com)  
Represents: Z-Tel Communications

• \*

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

• \*

McWhirter Law Firm  
Joseph McGlothlin/Vicki Kaufman  
117 S. Gadsden St.  
Tallahassee, FL 32301  
Phone: 850-222-2525  
Fax: 222-5606  
Email: [jmclglothlin@mac-law.com](mailto:jmclglothlin@mac-law.com), [vkaufman@mac-law.com](mailto:vkaufman@mac-law.com)  
Represents: Z-Tel Communications

- *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

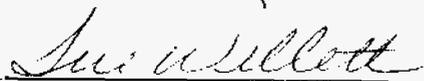
- *Rutledge Law Firm*  
*Kenneth Hoffman/John Ellis*  
*P.O. Box 551*  
*Tallahassee, FL 32302-0551*  
*Phone: 850-681-6788*  
*Fax: 681-6515*
- *SBC Telecom, Inc.*  
*Carol Paulsen*  
*5800 Northwest Parkway*  
*Suite 125, 1-Q-01*  
*San Antonio, TX 78249*  
*Phone: 210-641-3302*  
*Fax: 210-641-3882*
- \*
- *Sprint Communications Company Limited Partnership*  
*Susan Masterton/Charles Rehwinkel*  
*P.O. Box 2214*  
*MC: FLTLHO0107*  
*Tallahassee, FL 32316-2214*  
*Phone: (850) 847-0244*  
*Fax: 878-0777*  
*EMail: [susan.masterton@mail.sprint.com](mailto:susan.masterton@mail.sprint.com)*
- \*
- *Supra Telecom*  
*Wayne Stavanja/Mark Buechele*  
*1311 Executive Center Drive, Suite 200*  
*Tallahassee, FL 32301*  
*Phone: (850) 402-0510*  
*Fax: 402-0522*
- \*Telephone (Alternative Local Exchange only)
- \*Telephone (Incumbent Local Exchange only)
- \*
- *Time Warner Telecom of Florida, L.P.*  
*Carolyn Marek*  
*233 Bramerton Court*  
*Franklin, TN 37069*  
*Phone: (615)376-6404*  
*Fax: (615)376-6405*  
Represented by: Pennington Law Firm
- \*
- *Verizon Select Services Inc.*  
*Kimberly Caswell*  
*P.O. Box 110, FLTC0007*

Tampa, FL 33601-0110  
Phone: (813) 483-2617  
Fax: (813) 223-4888

• \*

Z-Tel Communications, Inc.  
John Rubino/George S. Ford  
601 S. Harbour Island Blvd.  
Tampa, FL 33602-5706  
Phone: (813) 233-4630  
Fax: (813) 233-4620  
EMail: [gford@z-tel.com](mailto:gford@z-tel.com)

Represented by: McWhirter Law Firm, Kelley Law Firm



Sue Willett