

ORIGINAL

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November 22, 2000

Mrs. Blanca S. Bayó
Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 000121-TP (OSS)

Dear Ms. Bayó:

Enclosed is an original and 15 copies of BellSouth Telecommunications, Inc.'s Reply Comments, which we ask that you file in the captioned matter.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return the copy to me. Copies have been served to the parties shown on the attached Certificate of Service.

Sincerely,



J. Phillip Carver

Enclosures

- APP _____
- CAF _____
- CMP 3
- COM 5
- CTR _____
- EDR 1
- LES 1
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cc: All parties of record
Marshall M. Criser, III
R. Douglas Lackey

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CERTIFICATE OF SERVICE
Docket No. 000121-TP

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via

U.S. Mail this 22nd day of November, 2000 to the following:

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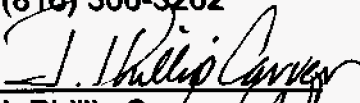
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Investigation into the) Docket No. 000121-TP
Establishment of Operations Support)
Systems Permanent Performance)
Measures for Incumbent Local Exchange)
Telecommunications Companies) Filed: November 22, 2000

BELLSOUTH TELECOMMUNICATIONS, INC.'S REPLY COMMENTS

BellSouth Telecommunications, Inc. ("BellSouth") hereby files its reply comments addressing the draft of the Performance Assessment Plan issued by the Florida Public Service Commission Staff on November 3, 2000, in Docket No. 000121-TP.

BellSouth generally agrees with both the structure and content of most of the draft Performance Assessment Plan (PAP) with the exception of several key issues addressed individually herein.

Section 2. Measurement Reporting

In Section 2, the draft Plan sets forth for the first time the proposal to use Section 364.285(1), Florida Statutes, as the basis to impose enforcement mechanisms upon BellSouth (i.e. penalties). This same proposal appears later in the Plan in Sections 4.4, 4.6, and 4.8. BellSouth agrees with one aspect of the proposal, the provision that most of the penalty payments under the Plan would be paid into the State General Revenue Fund. BellSouth disagrees with the

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portions that would require penalty payments directly to ALECs (e.g. Plan § 4.6), since these provisions are inconsistent with the requirement of § 364.285(1) that penalties be paid into the General Revenue Fund.

BellSouth must takes issue with the provision that, in effect, these penalties would be paid automatically. As the Plan properly notes (in Section 2.4), Section 364.285, Florida Statutes, provides for the payment of a penalty when a party is “found to have refused to comply with or to willfully violate” any Commission rule, Order of the Commission or provision of Chapter 364. This language clearly requires a finding that the violation is intentional and willful. Thus, historically, when the Commission has reason to believe that a party may have willfully violated, for example, a Commission rule, a show cause proceeding takes place to determine whether there is a basis to assess a penalty. This normal process not only allows the Commission to consider whether the violation is willful, but also provides the party accused of a willful violation an opportunity to be heard on a matter that affects its substantial interests. In other words, this show cause proceeding satisfies the requirements of due process.

In contrast, the proposed Plan would appear to do away completely with this crucial, and legally required, step and, instead, simply presume that any failure to meet the requirements of the Plan (in the circumstances detailed more specifically in the Plan) would be automatically punishable under Section 364.285. Section 364.285 simply will not allow this process.

Also, the Plan’s approach to this issue is not rehabilitated by language to the effect that the failure to satisfy a plan requirement “shall constitute an

admission of a violation of the Commission Order implementing this enforcement plan” (§ 2.5). The Commission can not do away with the requirement of willfulness in § 364.285 by ordering that any violation will be treated as willful, and labeling this edict as an “admission” by the violating party cannot change this result. If, § 364.285 is to be the basis for an assessment of penalties as part of a performance measurements plan, then there must be some process in place to afford BellSouth due process rights, and to go through the proper procedure to make the determination of intent that is inquired by 364.285 before any penalties are assessed.

2.1 Exhibit A – BellSouth will report its performance to individual ALECs and to the Florida Public Service Commission in accordance with the list of SQM, which are contained in Exhibit A.

BellSouth generally agrees with the list of Service Quality Measurements which the FPSC Staff recommendation lists in Exhibit A with one minor exception. Measurement O-14, Loop Make Up Information Timeliness should be changed to Loop Make Up Average Response Time. This minor wording change more concisely describes the measurement and is the naming convention that BellSouth is currently using in the development of this new measurement. BellSouth urges the Staff to amend its recommendation to make this minor change.

2.2 Exhibit B – BellSouth will report its performance to individual ALECs and to the Florida Public Service Commission in accordance with Enforcement Measurements, which are contained in Exhibit B.

BellSouth's opinion on when enforcement should become effective is discussed in detail in Section 4 of this document. When Enforcement does become effective, BellSouth generally agrees with the Enforcement Measurements that the FPSC Staff recommendation lists in Exhibit B. However there are several exceptions as noted below:

1) O-1, Percent Flow-through Service Requests (Summary) and O-2, Percent Flow-through Service Requests (Detail) – The FPSC Staff recommendation lists both of these Enforcement Measures as applying to both Tier I and Tier II of the Performance Assessment Plan. Given that the O-1 Summary report applies to aggregate ALEC data it is appropriate to include this metric only as a Tier II metric. Similarly, the O-2 Detail report applies to individual ALEC data. Therefore it is appropriate to include this metric only as a Tier I metric. This is consistent with the Staff's proposals regarding Operations Support Systems (OSS1&2) and Trunk Group Performance (TGP 1&2). BellSouth urges the Staff to amend its recommendation to include these changes.

2) O-6, Reject Interval and O-7, Firm Order Confirmation Timeliness - The FPSC Staff recommendation proposes to disaggregate both of these Enforcement Measurements by *Mechanized, Partially Mechanized and Non-mechanized*. BellSouth believes that enforcement mechanisms should only apply to Mechanized LSRs. Approximately 85% of LSRs are submitted electronically. Thus the enforcement mechanism should be focused on this

process, not on the non-mechanized ordering processes, much of which is due to the business decisions of the ALECs. As has been stated in both the Bell Atlantic New York and SBC Texas orders, an enforcement mechanism is intended to insure check list compliance after the ILEC has been approved for Inter-LATA long distance. (Bell Atlantic Order at ¶433, Texas Order at ¶ 423) The plan should provide a reasonable deterrence against backsliding. (Texas Order at ¶ 423) This does not mean that each process, sub-process, and product is required to have an associated enforcement mechanism.

BellSouth strongly opposes the Staff's recommendation on this issue for reasons previously stated. Moreover, manual ordering (non-mechanized) and electronically submitted LSRs known to require manual handling (partially mechanized) can be deliberately submitted in such a way (such as high volumes late in the day or a consistent volume of electronically submitted LSRs for complex services that are known to require manual handling) that payment of remedies is assured. At the very least, the FPSC Staff should provide a mechanism that protects against such "gaming." If the Staff continues to endorse this recommendation, the proposal should be modified to exclude those services designed to require manual handling for both ALEC and BellSouth retail units.

3) O-14, Loop Make Up Information Timeliness – As already discussed in 2.1 above the naming convention for this measurement should be changed to

Loop Make Up Average Response Time. In addition, since Loop Make Up requests are either received manually or electronically, the appropriate disaggregation of this Enforcement Measurement should be manual and electronic. The FPSC Staff's recommendation to disaggregate by *Mechanized, Partially Mechanized and Non-mechanized* is misleading. BellSouth urges the Staff to amend its recommendation to manual and electronic disaggregation.

4) CM-1, Timeliness of Change Management Notices – The intent of this measurement is to track the timeliness of Change Management Notices to the entire ALEC industry as opposed to Notices to individual ALECs, much the same as OSS Response Time and Interface Availability discussed above. Therefore BellSouth believes that the FPSC Staff should amend its recommendation and exclude this measurement from Tier I.

2.3 Raw Data – BellSouth will also provide electronic access to the raw data underlying the performance measurements.

BellSouth generally agrees with this requirement in the Florida Public Service Commission Staff's recommendation. However, there are some key points that must be considered. Performance reports for all BellSouth SQMs are currently available electronically on a monthly basis via BellSouth's web site at <https://pmap.bellsouth.com>. This web-site also allows ALECs to access electronically the raw data underlying those reports to the extent such reports are

derived from BellSouth's Performance Monitoring and Analysis Platform (PMAP). This would include the most critical ordering, provisioning, and maintenance & repair measurements in which ALECs generally are interested, including, but not limited to, FOC Timeliness, Reject Interval, Percent Missed Installation Appointments, Average Completion Interval Order Completion Interval Distribution, Missed Repair Appointments, Customer Trouble Report Rate, and Maintenance Average Duration.

While every performance report is available electronically, BellSouth does not have the capability to make available electronically the raw data that is used to generate reports prepared outside of PMAP but posted on the BellSouth Web site. This includes the raw data for the regional reports that are not specific to a single ALEC, which cannot be efficiently stored electronically. The measurements that reflect the Speed of Answer in the Ordering Center and Speed of Answer in the Maintenance Center are good examples. These measurements reflect the time during which a call is in queue until a BellSouth representative answers the call. These work centers are regional in nature and serve all ALECs, which means that hundreds of thousands of calls are received each month. Although each call is individually timed and the averages for the month are posted on the SQM reports, it is not reasonably possible to electronically identify each and every ALEC call underlying these SQM reports.

While it would be possible for BellSouth to manually load each piece of data so that it could be reviewed electronically, this would be an incredibly time consuming and expensive process. BellSouth should not be required to engage

in such a process. First, BellSouth is a leader in the industry in terms of making raw data available electronically for review by ALECs, and the access afforded by BellSouth's web-side is unparalleled in the industry. Second, ALECs generally have demonstrated very little interest in accessing the PMAP reports on the BellSouth web site, let alone the raw data that is currently available. Third, to the extent that raw data provides a means of validating reported values, this validation can be accomplished through periodic audits, such as the current audits being conducted by KPMG.

2.5 Availability of performance data and associated reports – In Section 2.3 the FPSC Staff recommends that “BellSouth will make performance data and reports available to individual ALECs on a monthly basis.” Additionally, in Section 2.5, the Staff further defines monthly availability by recommending “if performance data and reports are not published on the BellSouth web-site by the 15th calendar day of each month, each day past the due date shall constitute an admission of a violation of the Commission Order implementing this enforcement plan...”

The FPSC Staff has recommended the 15th calendar day of each month as the date by which BellSouth must publish its performance data and reports or suffer a monetary penalty. While this recommended date for publication might have been attainable in the early phases of performance data collection and publication, in today's environment, it is unrealistic.

Since 1998, BellSouth's production of performance data and reports has undergone a massive evolution. During that time, BellSouth has spent millions of dollars developing and implementing PMAP, the mechanized system for receiving, processing and publishing its performance data and reports. In today's

environment, based on the performance data and reports associated with the BellSouth Service Quality Measurements, mechanized data is obtained from many back-office systems after the month-end close jobs are run on those systems. Often this is not complete until 8 days into the month following the reporting period. This mechanized data is then divided among 17 batch jobs that are run serially (one at a time) totaling approximately 200 hours (approximately 8 days) of processing time. This time interval does not include audit controls, error correction, or data validation. It is not until after all the data is processed that validation of the actual reports can occur before the reports are actually published. Over the last 5 months, the earliest date all reports were published was the 16th of the month and the latest was the 31st of the month. This situation is now being further complicated by the fact that BellSouth's Service Quality Measurements, currently consistent in many of BellSouth's 9 states, are likely to become different among states, based on the requirements of individual state regulatory bodies. This differentiation by state adds additional processing requirements and processing times which will make it more and more difficult for BellSouth to publish future reports in as quickly as the reports are being published today.

Should an enforcement mechanism become effective, the published performance data and reports and results must be analyzed and evaluated to determine if remedy payments are warranted. This will increase the processing burden on BellSouth's computer systems.

Should an enforcement mechanism become effective in Florida, it is critical that this Commission allow BellSouth sufficient time to insure the validity and accuracy of the performance data and reports that it publishes each month since BellSouth may be held monetarily accountable for disparate treatment demonstrated by this data. Therefore BellSouth does not believe that it is unreasonable of the FPSC Staff to amend its recommendation to change the reporting date from the 15th of the month to the 30th of the month for posting the Service Quality Measurements reports. It is important to note that it is not until these Service Quality Measurements reports are posted that the process starts for producing BellSouth's VSEEM reports and penalty payments. This is due to the fact that BellSouth must have accurate and validated data on which to base any potential penalty payments for disparate treatment.

Section 3. Modifications to Measurements

BellSouth concurs with the recommendation of the Florida Public Service Commission Staff regarding this section. Performance measurements have undergone a rapid metamorphosis over the past several years and that process continues in various generic dockets such as this one. Many of the measurements, retail analogs and benchmarks proposed in Florida are either new or have changed as a result of collaborative processes and regulatory proceedings. Periodic reviews in Florida, as recommended by the FPSC Staff, are warranted to validate the appropriateness and applicability of these changes.

Section 4. Enforcement Mechanisms

4.2 Effective Date – FPSC Staff recommended, “enforcement mechanisms shall become effective 90 days after the Florida Public Service Commission issues a final order in this case.”

BellSouth's position is that, because the FCC has identified the implementation of enforcement mechanisms and penalties to be a condition of 271 relief, it would be inappropriate to implement such mechanisms prior to BellSouth's obtaining interLATA relief. The FCC's view of enforcement mechanisms and penalties is that such a plan would be an additional incentive to ensure that an ILEC continues to comply with the competitive checklist after interLATA relief is granted. As discussed in more detail below, the FCC has repeatedly indicated that enforcement mechanisms are a consideration of whether granting 271 approval is in the public interest. Furthermore, the FCC has never indicated that enforcement mechanisms and penalties are either necessary or required to ensure that BellSouth meets its obligations under Section 251 of the Act.

Because enforcement mechanisms are not required by the Act or by any FCC rule, BellSouth does not think it is appropriate for a state commission to order BellSouth to implement a self-executing remedy plan without BellSouth's consent. To the extent that any breach of contract issue should arise, there is perfectly adequate State law and Commission procedures available to address such situations. BellSouth's SQMs are fully enforceable through the dispute resolution process, Commission complaints, or the courts in the event of BellSouth's failure to meet such measurements.

Further, nothing in the Act requires a self-executing enforcement plan. The FCC has acknowledged as much in its orders. In its August 1996 Local Competition Order, the FCC notes that several carriers advocated performance penalties. *See Local Competition Order, 11 FCC Rcd at 15658 [¶ 305].* The FCC did not adopt such performance penalties in the Local Competition Order. Instead, it acknowledged the wide variety of remedies available to an ALEC when it believes it has received discriminatory performance in violation of the Act; *see FCC's Local Competition Order ¶ 129, 11 FCC Rcd. at 15565 (emphasizing the existence of sections 207 and 208 FCC complaints for damages, as well as actions under the antitrust laws, other statutes and common law);* and “encourage[d]” the States only to adopt reporting requirements for ILECs. Likewise, in its order approving Bell Atlantic's entry into long distance in New York, the FCC analyzed Bell Atlantic's performance plan “solely for the purpose of determining whether the risk of post-approval non-compliance is sufficiently great that approval of its section 271 application would not be in the public interest.” Bell Atlantic Order, at ¶433 n.1326.

Furthermore, in its October 13, 1998 order regarding BellSouth's Section 271 application for Louisiana, the FCC reiterated that the existence of such an enforcement plan is not a pre-requisite to compliance with the competitive checklist, but rather is a factor that the FCC will consider in assessing whether the RBOC's entrance into the interLATA market would serve the “public interest.” See FCC's Louisiana II Order, at ¶363 and n.1136. The FCC stated that “evidence that a BOC has agreed in its interconnection agreements to performance monitoring” (including performance standards, reporting requirements, and appropriate self-executing enforcement mechanisms) “would

be probative evidence that a BOC will continue to cooperate with new entrants, even after it is authorized to provide in-region, interLATA services.” *Id.* at ¶¶363-64.

The FCC has made it clear that the primary, if not sole, purpose of a voluntary self effectuating remedy plan is to guard against RBOC “backsliding”; that is, providing discriminatory performance after it has received the so-called “carrot” of long distance approval.

Therefore, because performance penalties serve no purpose until after interLATA 271 relief is granted, BellSouth recommends that its VSEEM III proposal take effect when the plan becomes necessary to serve its purpose; i.e., after BellSouth receives interLATA authority. Under BellSouth’s proposal, each Florida ALEC that has incorporated the plan into its interconnection agreement will be eligible for payment of penalties by BellSouth at such time as BellSouth obtains interLATA relief in Florida.

4.3.1 Enforcement Measurements – The PFSC Staff defines enforcement measurements in Exhibit B as “a subset of the Service Quality Measures used to evaluate BellSouth’s performance.”

BellSouth agrees that those measurements listed in Exhibit B are the proper set of enforcement measurements. BellSouth would like to re-emphasize that those enforcement measurements are based on key, outcome measurements contained in its Service Quality Measurements. Voluntary self-effectuating remedies should apply to key, outcome-oriented measures that capture the results of processes directly impacting the customer. Enforcement

mechanisms should not apply to measurements of sub-processes within an overall process. The imposition of voluntary, self-effectuating penalties on every measure in the SQM would impermissibly subject BellSouth to being penalized more than once for a single act or failure to act because many of the measures are interrelated to one another.

The measurement set included in BellSouth's Voluntary Self-Effectuating Enforcement Mechanisms (VSEEM) is similar to those in Exhibit B. BellSouth proposed these measures based, in part, on the collaborative work between ILECs, ALECs, and State Commissions in New York and Texas. Collaborative efforts in both New York and Texas resulted in either a "critical" measurement set, or a prioritized set of "high, medium, low", respectively. These commissions charged the ALECs with communicating the measurement set that is most 'customer impacting'. BellSouth's experience in providing access to IXC's, combined with the outcome of prioritized measures from New York and Texas has resulted in BellSouth offering of a key set of customer impacting metrics.

4.3.2 & 4.3.3 – Benchmarks and Analogs as set forth in Exhibit C

In Exhibit C, the Florida Public Service Commission Staff sets forth their proposed benchmarks and analogs for the Performance Assessment Plan. BellSouth is in agreement with most of the benchmarks and analogs with the following exceptions:

- 1) The FPSC Staff defines the analog for OSS Average Response Time as Parity with Retail. BellSouth strongly disagrees. BellSouth believes that this

analog should be modified to be "Parity + 4 seconds". The additional 4 seconds are designed to address the time it takes orders to navigate the security walls that must be placed between the CLEC systems and the BellSouth systems. The FCC has recognized that such additional time is appropriate. In the *Bell Atlantic Order*, the FCC held that "our finding that Bell Atlantic processes pre-order inquiries from competing carriers in substantially the same time that it takes to process analogous retail transactions is based on Bell Atlantic's performance data." *Bell Atlantic Order*, at ¶ 146. Just like the standard BellSouth is seeking in this proceeding, Bell Atlantic reports pre-order response times based on a performance standard of "parity + 4 seconds" established by the New York Commission. The security measures and computer translations in BellSouth's pre-ordering systems are analogous to those of Bell Atlantic, and thus the four seconds sought by BellSouth are reasonable.

2) In its recommendation, the FPSC Staff established a mechanized Reject Interval of 97% in less than 1 hour. BellSouth believes that the appropriate benchmark should be 95% of all LSRs that are submitted through a mechanized system will be returned to the ALEC in less than 1 hour. The 97% is very stringent and appears to be an arbitrary benchmark. The 95% recommended by BellSouth provides the ALECs with a "meaningful opportunity to compete" and provides some allowance, although tight, for unforeseen circumstances.

4.3.6 Parity Gap - The FPSC Staff defines the calculation of the parity gap as “calculated by using a truncated Z-test methodology and comparing the Z-test statistic for the cell to the balancing critical value”.

This definition by the FPSC Staff is not entirely correct. The parity gap is the difference in the aggregate truncated Z value and the balancing critical value. The cell level Z scores are not used to find the parity gap.

4.3.8 Delta Value – The FPSC Staff recommends a delta value of .5 for individual ALEC calculations and .35 for aggregated calculations.

BellSouth disagrees. BellSouth strongly urges the FPSC Staff to amend its recommendation and adopt 1.0 as the delta value for individual ALEC calculations and 0.50 for aggregated calculations. There appears to be some misconceptions involving this value, and we feel that it needs to be better understood.

Delta is not a statistical measurement, however, it is needed as input into the statistical test methodology so that disparity is determined for only those measures that exhibit a material difference. It is a well-documented fact that traditional statistical comparisons of measures may indicate that significant differences exist when the differences are immaterial. For example, BellSouth may take an average of 4 hours to perform a specific task for its own customers and an average of 4.1 hours to perform the same task for an ALEC’s customer. Although from a statistical point of view the 0.1 hour difference may be

significant, from a materiality aspect it may not adversely affect the ALEC's relationship with its customer.

The error probability balancing methodology that the FPSC Staff recommends helps to address this problem. When a mean measure is being tested, a delta value is chosen as a reference point in order to calculate the probability of declaring parity when the actual difference in mean performance between the ILEC and ALEC is "delta" standard deviations apart. For example, suppose that BellSouth takes an average of 4 hours to perform a specific task for its own customers with a standard deviation of 2 hours. Then the test methodology is worked out so that the probability of determining disparity when there is none (a Type I Error) is equal to the probability of determining parity when the average performance between BellSouth and an ALEC differs by "2 delta" (a Type II Error). If delta is 1, then balancing occurs at a 2 hour separation (BellSouth 4 hours vs ALEC 6 hours).

One should not conclude from this that no penalty will be paid by BellSouth until the actual difference in performance becomes "delta" standard deviations or larger (6 or more hour average ALEC performance in the above example). In fact, when non-compliance/disparity occurs, the probability of paying a penalty is 50 percent when the actual disparity calculated by the statistical test is 'delta/2' (or, 1/2 delta) standard deviations. The probability of a penalty increases above 50 percent as the amount of the disparity increases. When transaction volumes are high, the probability of a penalty gets very close to 100 percent for disparity amounts slightly larger than 'delta/2.' Thus, the

balancing methodology inherently defines the materiality standard as a disparity amount of "delta/2," not "delta".

AT&T recognizes this fact of materiality (disparity of delta/2 or more) in their remedy proposal; where AT&T proposes a quadratic function of z/z^* (here, z^* is the critical value which we refer to as c_B) to determine penalty payments. In AT&T's plan, penalties start when the z/c_B is greater than 1, or equivalently when z is less than c_B . When solving the algebraic equations related to the modified z and the balancing critical value, the result is the ratio of the disparity estimate to "delta/2". So AT&T's plan says to penalize the ILEC when the estimated disparity in the system is at least 'delta/2.' BellSouth's VSEEM plan effectively does the same thing, although the process of determining the remedy dollar value is different.

Thus, delta is a parameter that brings materiality into the testing procedure, and only mean performance differences larger than "delta/2" standard deviations will be recognized as "out of parity."

The choice of delta should be based on business principles. To do this, one should keep in mind the way that VSEEM III is designed to insure post-271 compliance with the Act by compensating for performance differences that are material enough to affect customer behavior. One means of determining what is and is not significant in servicing orders is to assess variance or standard deviations such as might appear on a statistical process control chart. This is what BellSouth's field operation personnel do as part of a quality control program.

Generally, three standard deviations are considered the normal variance above which differences are considered to be significant. William Edwards Deming, in Chapter 16 of his book *Some Theory of Sampling* states, "[I]n practice, 3-sigma limits have been found to be the correct spacing as judged by the criterion that the control-chart procedure should strike a balance between these two mistakes." What Mr. Deming refers to as mistakes, are commonly called Type I and Type II errors.

In choosing a delta of 1, BellSouth believes that it is asking its field operation personnel to monitor ALEC performance within 1 standard deviation; a level of control that is much more stringent than BellSouth offers its own retail operations. Thus, BellSouth believes that it has made an attempt at providing a business rationale for its choice of delta.

The FPSC Staff needs to recognize that remedies will still be rendered for ALEC performance that fall within the 1 standard deviation tolerance band. As mentioned above, a delta value of 1.0 results in a 'penalty situations' when the estimated difference in ILEC Mean and CLEC Mean (in terms of ILEC standard deviations) is "0.5 delta" for Tier I performance. Furthermore, Tier II performance is assessed as a more stringent level since BellSouth expects to see less difference between the BellSouth and ALEC means for Tier II measurements, a smaller delta is warranted to establish materiality. BellSouth's recommended delta value of 0.5 results in a 'penalty situations' when the estimated difference in ILEC Mean and CLEC Mean (in terms of ILEC standard deviations) is "0.25 delta" for Tier II performance.

The FPSC Staff recommendations of a delta of 0.5 for Tier I and 0.35 for Tier II implies that remedies will be paid when the estimated difference in ILEC Mean and CLEC Mean (in terms of ILEC standard deviations) is "0.25 delta" and "0.175 delta" for Tiers I and II, respectively. BellSouth argues that this places an undue burden upon its field operation, and sets up situations where the only way to statistically show parity service exists between BellSouth and ALEC customers is to provide better than parity service to the ALEC customers. The only thing this accomplishes is ill will, not a more competitive market place.

4.4.4 If a measure fails twice in three consecutive months, BellSouth must perform a "root cause analysis" and file with the Florida Public Service Commission a corrective action plan within 30 days after the end of the second failed month.

BellSouth disagrees with this proposal. BellSouth is currently engaged in two processes that are designed to achieve the same objective as that which is proposed by the Florida PSC. First, the Change Control Process ("CCP") is a collaborative effort by BellSouth and member ALECs to ensure appropriate ALEC access to BellSouth's Operational Support Systems ("OSS") as required by the Telecommunications Act of 1996. The CCP addresses – among other issues – system and documentation defects that are ALEC-affecting, and provides for a status-reporting and correction plan regarding all such deficiencies.

In addition to the CCP, BellSouth is responding to a Georgia Public Service Commission staff recommendation for the formation of a region-wide

Process Improvement Team to expedite the development of methods and procedures ("M&Ps") to allow ALECs to order all BellSouth products and services electronically. This request came out of the Commission's hearings on Service Quality Measurements, and holds to the premise that such M&P development would improve ALEC access to BellSouth's OSS, and minimize ALEC service order failure. While this team is sanctioned by the Georgia Commission, the team's activities will benefit Florida.

Inasmuch as BellSouth is currently expending resources toward both of these efforts, BellSouth feels that it shouldn't be burdened by additional administrative requirements to replicate the results of processes already in place. BellSouth would prefer to focus on continued development and improvement of both the CCP and the Process Improvement Team.

Lastly, an enforcement plan, when it becomes effective, is intended to incent performance at parity, to function automatically (that is, be self-effectuating) and avoid administrative burdens for the ALEC, BellSouth and the Commission. Conducting root cause analysis is an administrative process that is both burdensome and unnecessary given that enforcement will provide the incentive to automatically correct significant disparate treatment.

4.6.4 Disputes - If a CLEC disputes the amount paid to the CLEC under Tier I Enforcement Mechanisms, the CLEC shall submit a written claim to BellSouth within sixty (60) days after the date of the performance measurement report for which the obligation arose. BellSouth shall investigate all claims and provide the CLEC written findings within thirty (30) days after receipt of the claim. If BellSouth determines the CLEC is owed additional amounts, BellSouth shall

pay the CLEC such additional amounts within thirty (30) days after its findings along with six (6) percent simple interest per annum.

While BellSouth is in agreement with the concept of a dispute resolution process, there is concern that the process as proposed above will allow any ALEC to submit any claim for any reason. This could result in a virtual flood of frivolous disputes. BellSouth believes a dispute process should discourage such action by a combination of the following:

- Limiting the number of disputes resulting in no additional payment
- Invoking administrative penalties for submitting such disputes
- Placing thresholds on additional amounts disputed below which a dispute couldn't be submitted.

4.8.1 Procedural Caps – The Florida Public Service Commission Staff recommends the use of a procedural cap.

Any voluntary, self-executing remedy plan adopted by the Commission should contain an absolute cap and not a procedural cap. There should be a limit on how much financial risk an ILEC should have to bear in self-executing penalty payments. This by no means guarantees an overall cap on BellSouth's ultimate liability. As the FCC has repeatedly stated, a self-executing enforcement plan is not intended to be "the only means of ensuring that [the RBOC] continues to provide nondiscriminatory service to competing carriers. In addition to the [financial dollars] at stake ... [the RBOC] faces other consequences if it fails to sustain a high level of service to competing carriers,

including: federal enforcement action pursuant to section 271(d)(6); ... and remedies associated with antitrust and other legal actions." See Bell Atlantic Order, at ¶435.

The FPSC Staff recommends a procedural cap for payments under Tier I and Tier II Enforcement Mechanisms of 39% of BellSouth net revenues in Florida or approximately \$337 million. BellSouth is at a loss to understand how the Staff arrived at this recommendation. Before discussing staff's recommendation, it may be instructive to review BellSouth's original proposal.

BellSouth's VSEEM III incorporates an absolute financial cap of 20% of net revenues. The method for calculating the dollar amount associated with 20% of net revenues is exactly the same as was used in New York and in Texas. There are two differences however. Both Texas and New York applied 36% of net revenue, as compared to BellSouth's 20%. However neither the Texas or the New York enforcement plans have provisions to voluntarily suspend long distance marketing, without any action of a Commission. BellSouth's Tier III does just that. Tier III was developed as a result of discussions with the FCC who suggested that an enforcement plan should include a non-monetary consequence with a significant impact so that an ILEC would not be encouraged to treat enforcement impacts as an additional cost of business. BellSouth's Tier III voluntarily gives up the right to sell to one of the largest telecommunications markets.

While Tier III is intended to be a non-monetary consequence, it does have very significant monetary consequences. As an example, within approximately 10 months after Bell Atlantic received 271 approval in New York, 1.2 million customers had opted for its long distance offering, including some 56,000 businesses. (Based on a Verizon News Release on October 30, 2000, and posted on the Verizon web-site at <http://newscenter.verizon.com/proactive/newsroom/release.vtml>) Due to the relative sizes of New York and Florida in terms of access lines, BellSouth does not expect 1 million customers in Florida but the market potential should be proportionally similar. Thus the incremental revenue due to long distance and packaging a complete telecommunication solution has a significant financial impact.

It is important to remember: (1) BellSouth's Tier III would be triggered in the event performance deteriorates to the level that Tier I and Tier II remedies are exhausted and that (2) no matter what the cap, ALECs will retain the right to pursue other legal remedies, including treble damages, under federal and state antitrust laws, before state and federal agencies and federal and state courts of law.

Apparently the Florida Commission Staff recommendation ignored or discounted the non-monetary and monetary impact of Tier III.

In the Bell Atlantic Order, ¶ 436, the FCC stated " In 1998, Bell Atlantic reported a Net Return of \$743 million in New York: \$269 million would represent 36% of this amount. On the basis of this comparison, we conclude that \$269 million represents a substantial percentage of Bell Atlantic's profits, and agree

with the New York Commission that “the dollars at risk in the [APAP] are substantial and should deter [Bell Atlantic's] incentive to provide discriminatory service.” In the FCC Texas Order, at ¶ 424, the FCC stated that “We conclude that the total of \$289 million in potential penalties placed at risk, on an annual basis, under the performance plans represents a meaningful incentive for SWBT to maintain a high level of performance¹²³⁵ .”

It appears that the FPSC may have based its proposed 39% in Florida on the 36% imposed on Bell Atlantic in New York plus an additional 3% added on as a result of a New York Public Service Commission Market Adjustment order resulting from OSS failures in New York. BellSouth can only conclude from this that the FPSC Staff anticipates that BellSouth will encounter the same OSS failures as Bell Atlantic in New York even though there is no evidence in this proceeding to substantiate such failures. BellSouth certainly does not anticipate any such failures.

As previously stated, it is important to remember that neither Bell Atlantic nor Texas offers a Tier III voluntary suspension of long distance marketing as a part of their respective enforcement plans and that both the Bell Atlantic and Texas enforcement plans contain absolute and not procedural caps. Given that BellSouth's proposed Tier III suspension of long distance marketing would represent a significant loss in potential revenue, BellSouth urges the FPSC Staff to reconsider its recommendation of 39% of net revenues and adopt a

¹²³⁵ SWBT Dysart Texas I AFF. at para 52. SWBT set the cap at \$289 million annually in response to concerns that SWBT's earlier cap was too low. The cap is based on 36% of SWBT's net return, and will be recalculated annually, but will never exceed \$289 million or go below \$225 million. The cap is comparable to the cap we deemed adequate for Bell Atlantic in New York.

percentage less than the 36% consistently ordered as part of 271 application approvals.

4.8.3 Escrow - The FPSC Staff recommends that “BellSouth must make payments up to the procedural cap and put the amount in excess of the cap in an escrow account”.

The Florida Public Service Commission Staff recommends that any amount in excess of the procedural cap be put into an escrow account. BellSouth is not a small ILEC and has established a long and successful business reputation in Florida. Even if the Florida Public Service Commission decides to order a procedural cap, it is entirely unnecessary to require BellSouth to place potential remedy dollars in escrow pending the outcome of Florida Commission proceedings.

Section 5. Market Penetration Adjustment

BellSouth concurs with the recommendation of the Florida Public Service Commission Staff regarding this section.

Section 6. Auditing Measurement Data

BellSouth generally concurs with the recommendation of the Florida Public Service Commission Staff regarding this section. However in Section 6.1, the language should specify that the audit, when conducted, shall cover only the results from the current year. This is to avoid an audit of data from a period several years in the past.

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