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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION
REBUTTAL TESTIMONY
OF
JAMES A. LENIHAN

Q. Please state your full name, position, and business address.

A. My name is James A. Lenihan. I am employed by Sprint Communications Company Limited Partnership (“Sprint”) as a Product Manager in External Affairs, specifically addressing Incumbent Local Exchange Company (“ILEC”) Operating Support Systems (“OSS”). My business address is 9225 Indian Creek Parkway, Overland Park, KS 66210.

Q. Have you previously filed testimony in this docket?

A. Yes, I submitted Direct Testimony in this proceeding on November 1, 2000.

Q. What is the purpose of your Rebuttal Testimony?

A. The purpose of my Rebuttal Testimony is to address certain portions of the BellSouth witnesses’ prefiled Direct Testimony on November 1, 2000, Docket Number 000828-TP, in connection with BellSouth’s performance measurement plan discussed during negotiations pertaining to the renewal of the Sprint/BellSouth interconnection Agreement.

Issue 24: What is the appropriate level of geographic disaggregation for performance measurement reporting to Sprint?

1 **Q. Does BellSouth's SQM document provide for the appropriate level of geographic**
2 **disaggregation of measurement data?**

3 A. No. Sprint believes that BellSouth should be required to disaggregate its measurement
4 data consistent with the manner in which it geographically disaggregates its other
5 external or internal performance related reports. If BellSouth has not established
6 geographical units in Florida smaller than statewide reporting, then the Commission
7 should require BellSouth to disaggregate at the Metropolitan Statistical Area ("MSA")
8 level. As previously discussed in my Direct Testimony, statewide reporting is simply
9 too broad to accurately identify areas of potential discrimination in service.

10

11 **Q. Does Sprint agree with BellSouth's assessment on state level reporting in**
12 **Florida?**

13 A. No. As stated in my Direct Testimony, statewide reporting is too broad to accurately
14 identify areas of potential discrimination in service. For example, in instances where
15 competition is concentrated in only a few cities in a given state, statewide reporting
16 could mask the fact that in those cities, the ILEC may be giving far better service to its
17 own customers than to the ALECs, even though its service to the ALECs matches its
18 statewide performance to its own customers. Sprint believes that reporting beyond a
19 state level will greatly enhance both ALECs' and the Commission's ability to detect
20 discriminatory treatment.

21

22 *Issue 25: What performance measurement audit provision(s) should be included in the*
23 *agreement?*

24 **Q. Does Sprint agree with BellSouth's assertion that 900 "initial" audits would be**
25 **necessary under Sprint's proposal?**

1 A. No. Sprint is not suggesting that BellSouth conduct an annual audit for each ALEC.
2 Instead, Sprint proposes that an initial audit and certification process be performed to
3 ensure that BellSouth's reporting procedures are sound and that data collection and
4 reporting are timely, accurate and complete. Such a review is currently being
5 conducted with the Commission's oversight in Florida. BellSouth should pay for the
6 services of the independent auditor to complete the initial audit and subsequent annual
7 audits of a similar nature. ALEC(s) are extremely dependent upon the accuracy of
8 BellSouth's Performance Measures and cannot afford a potential pitfall in BellSouth's
9 services to ALEC(s). At minimum, the cost of the first three annual audits would be
10 the responsibility of BellSouth. As I stated in my direct my Direct Testimony, in
11 addition to an initial comprehensive audit and annual audits, Sprint's proposal would
12 grant Sprint the right to conduct "mini-audits" of individual performance measures
13 and or sub-measures during the calendar year. Such mini-audits would allow Sprint to
14 investigate anomalies encountered during the course of operation, rather than waiting
15 until the next annual audit. When Sprint has reason to believe the data collected for a
16 measure is flawed or the reporting criteria for the measure is not being adhered to,
17 Sprint should have the right to conduct a mini-audit performed on the specific measure
18 upon written request. If, 30 days after a written request, Sprint believes that the issue
19 has not been resolved to its satisfaction, then Sprint would commence the mini-audit
20 upon providing BellSouth with 5 business days advance written notice. Sprint
21 proposes that it would be limited to auditing five single measures during the year.
22 Sprint would pay for the mini-audit, including BellSouth's reasonable associated costs
23 and expenses, unless BellSouth is found to be misreporting or misrepresenting data or
24 to have non-compliant procedures, in which case, BellSouth would pay for the mini-
25 audit, including Sprint's reasonable associated costs and expenses. If, during a mini-

1 audit of individual measures, more than 50% of the measures in a major service
2 category are found to have flawed data or reporting problems, the entire service
3 category would be re-audited at the expense of BellSouth. The Commission should
4 bear in mind that multiple, simultaneous audits could strain the resources of BellSouth
5 and should allow BellSouth reasonable latitude in scheduling audits. Sprint's
6 proposed audit plan will provide Sprint with the assessment tools needed to adequately
7 determine whether BellSouth is fulfilling its parity obligations.

8

9 **Q. Does Sprint agree with BellSouth's claim that under Sprint's proposal, BellSouth**
10 **could be responsible for conducting over 2,754 mini audits a year?**

11 A. No. Sprint suggests that BellSouth has greatly underestimated their system's ability to
12 report on performance measures. Sprint believes through various independent
13 performance measure audits conducted on BellSouth's interim performance measures
14 that the possibility of BellSouth participating in 2,754 audits a year is an exaggeration.
15 The Commission should not give any merit to this exaggeration. ALEC(s) need the
16 capability to conduct mini-audits if anomalies are encountered during the course of
17 operation, rather than waiting until next comprehensive annual audit.

18

19 **Q. Does Sprint agree with BellSouth that using BellSouth's raw data to produce**
20 **additional reports is a valid alternative to mini-audits?**

21 A. No. Sprint believes that the raw data and associated reporting capabilities resources for
22 investigating performance measure anomalies and are NOT a viable alternative to
23 conducting mini-audits. Moreover, if an ALEC finds a potential discrepancy with
24 BellSouth's raw data then the ALEC should have the right to conduct a mini-audit.

25

1 *Issue 23: Should the Agreement contain a provision stating that if BellSouth has provided*
2 *its affiliates preferential treatment for products or services as compared to the provision of*
3 *those same products or services to Sprint, then the applicable standard will be replaced for*
4 *that month with the level of service provided to the BellSouth affiliate?*

5

6 **Q. Does BellSouth's plan currently encompass Sprint's proposal to alter the**
7 **applicable measurement standard in the event that BellSouth provides superior**
8 **service to its affiliates for any performance measurement?**

9 A. No, and as indicated in my previously filed Direct Testimony, the Commission should
10 require BellSouth to implement this safeguard. If BellSouth has given preferential
11 treatment to its affiliate for products and services as compared to BellSouth's
12 provision of those same products and services to ALECs, then the applicable standard
13 (either parity with retail operations or a pre-established benchmark) should be replaced
14 for that month with the superior level of service given to BellSouth's affiliate. The
15 revised standard should then be utilized to calculate all applicable penalties.

16

17 **Q. Is there any provision whatsoever in BellSouth's performance measurements**
18 **proposals to address how to remedy situations where BellSouth is providing**
19 **superior performance to an affiliate?**

20 A. No, there is not. BellSouth has consistently refused to address this issue and has
21 offered no alternatives to Sprint's proposal. Accordingly, Sprint urges the
22 Commission to endorse Sprint's proposal on this issue.

23

24 *Issue 26: Should the availability of BellSouth's VSEEM III remedies proposal to Sprint,*
25 *and the effective date of VSEEM III, be tied to the date that BellSouth receives interLATA*

1 *authority in Florida?*

2

3 **Q. BellSouth suggests the effective date for performance measurement remedies**
4 **should be tied to the date BellSouth receives interLATA authority in Florida.**
5 **Does Sprint agree?**

6 A. No. Sprint believes that BellSouth is confused as to the purpose of an enforcement
7 mechanism. The purpose of a performance measurements enforcement mechanism is
8 not to serve as a perfunctory step that BellSouth must complete in order to obtain
9 interLATA authority. Rather, the purpose of an enforcement mechanism is to ensure
10 that ALECs truly obtain nondiscriminatory interconnection and access to unbundled
11 network elements, and that there are swift and severe consequences for BellSouth
12 when conduct emerges that is indicative of discriminatory treatment of ALECs. The
13 market effects of the improper conduct will surely occur and conventional monetary
14 penalties may be far too small in relation to the business advantage to be gained by
15 discriminatory conduct to serve as an effective deterrent. Particularly in the initial
16 stages of competition, when the concept of local competition is a novel one for
17 consumers, and ALECs are most dependent on ILEC services and facilities, anything
18 that an ILEC does to degrade the quality of service provided by the newcomer can
19 place an indelible mark against the ALEC in the eye of consumers. Such service
20 degradation could saddle Sprint with a reputation for poor service that would be
21 difficult to overcome. Penalties must be severe enough to change the behavior of the
22 ILEC. This means that the penalty would outweigh the financial costs to correct the
23 problems.

24

25 *Issue 27: Should BellSouth be required to apply a statistical methodology to the SQM*

1 *performance measures provided to Sprint?*

2

3 **Q. Please describe this issue regarding the application of the BellSouth statistical**
4 **methodology to Sprint's performance measurement results.**

5 A. BellSouth has refused to provide for the application of the BellSouth statistical
6 methodology to Sprint's performance measurement results in the proposed
7 interconnection agreement between the parties. BellSouth initially included language
8 delineating its statistical methodology in the draft agreement, but withdrew the
9 proposed provisions when it learned that Sprint did not agree with BellSouth's
10 position that its VSEEM III remedy plan should become effective when BellSouth
11 receives InterLATA long distance authorization in a particular state.

12

13 **Q. Please explain Sprint's position on this issue.**

14 A. The application of a statistical methodology to performance measurement results
15 should not be linked to the acceptance of BellSouth's VSEEM III remedy plan nor to
16 its effective date. While the VSEEM III plan does provide for the use of BellSouth's
17 statistical methodology for the determination of self-executing remedy payments, that
18 is not the exclusive purpose of such a methodology from Sprint's perspective.

19

20 Statistical methodologies were originally envisioned and designed to provide a way to
21 determine whether there are statistically significant differences between BellSouth's
22 performance when providing service to its own retail customers and affiliates and its
23 performance to Sprint. The underlying rationale is that there may be slight differences
24 in performance provided to these groups of customers that may be statistically
25 "insignificant", and therefore such differences should not be considered indicators of

1 “out of parity” performance by BellSouth. Without such a methodology, if BellSouth
2 provisions a particular service type for its own retail customers in, for example, three
3 days, and provisions that same service type for ALECs in 3.1 days, BellSouth would
4 be seen as providing discriminatory service favoring its own customers. If such
5 performance continued, Sprint might legitimately use such performance as the basis
6 for a Commission complaint. The key question, lacking a statistical methodology,
7 which by design calculates what constitutes a statistically significant difference, is
8 “how much of a performance deficiency is too much?” A statistical methodology
9 relieves the burden on the parties and on the Commission of applying the “eyeball
10 approach”, that is, undertaking a mere visual comparison of the data to see if it looks
11 out of line.

12

13 BellSouth’s withdrawal of its statistical methodology from the proposed
14 interconnection agreement between the parties is illogical and will likely result in
15 unwarranted requests for Commission intervention in performance disputes.

16

17 **Q. What rationale has BellSouth provided for withdrawing its offer of the Statistical**
18 **Methodology section of the Performance Measurements agreement?**

19 A. BellSouth has advised Sprint and has restated in its Direct Testimony in this docket
20 that the Statistical Methodology is part of the VSEEM III remedy plan and was never
21 intended to be linked to the Service Quality Measurements alone.

22

23 **Q. What is Sprint’s perspective on BellSouth’s rationale?**

24 A. Sprint is perplexed by BellSouth’s terse explanation, particularly in light of the fact
25 that the use of a statistical methodology was discussed in detail and at length in the

1 Louisiana Commission's performance measurements docket, in which BellSouth has
2 been a most active participant, long before BellSouth ever proposed its first VSEEM
3 remedy plan. As part of the review and discussion of statistical methodologies,
4 BellSouth employed statistical experts to assist in the design and development of the
5 statistical approach. BellSouth's attempt to now separate the Service Quality
6 Measurements from the Statistical Methodology is a quantum leap backwards in the
7 use and application of ALEC service quality performance measurements.

8
9 **Q. How does BellSouth's refusal to provide its Statistical Methodology in
10 conjunction with its Service Quality Measurements harm Sprint?**

11 A. As mentioned previously, the failure to apply the Statistical Methodology to
12 performance measurement results makes it harder for the parties to identify where
13 performance concerns exist. From an administrative standpoint, this means that Sprint
14 will have to spend more time and resources interpreting the data and inevitably more
15 time and resources debating with BellSouth about what the numbers mean. If the
16 Commission ultimately became involved in a dispute, the Commission would likewise
17 be required to expend additional effort interpreting the data. Applying the Statistical
18 Methodology would make this additional administrative time and effort unnecessary.
19 In addition, process improvement efforts would be hard to target and would likely be
20 delayed due to data interpretation efforts. The additional information that the
21 statistical analysis delivers is critical to accurately pinpointing where BellSouth needs
22 to direct its process improvement efforts. Without such an analysis, performance
23 deficiencies would continue to impact Sprint's business for a longer period of time
24 since determination of performance deficiencies would consume the parties' initial
25 time and effort instead of action toward performance improvement.

1 **Q. What action does Sprint request that the Commission take on this issue?**

2 A. Sprint requests that the Commission order BellSouth to include its Statistical
3 Methodology language in the Performance Measurements Attachment of the
4 Sprint/BellSouth Interconnection Agreement. The Commission should also state that
5 including such language in the interconnection agreement means that BellSouth must
6 apply the statistical methodology to Sprint's results and produce commensurate
7 reports.

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9 **Q. Does this conclude your Rebuttal Testimony?**

10 A. Yes

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