

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

REBUTTAL TESTIMONY OF

CHERYL BURSH

ON BEHALF OF

**AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.
WORLD COM, INC.
DIECA COMMUNICATIONS COMPANY D/B/A COVAD COMMUNICATIONS
COMPANY
NEW SOUTH COMMUNICATIONS CORP.
MPOWER COMMUNICATIONS CORP.
E.SPIRE COMMUNICATIONS, INC.
ITC^DELTACOM COMMUNICATIONS, INC.
RHYTHMS LINKS INC.
Z-TEL COMMUNICATIONS, INC.***

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* Z-Tel endorses the testimony of Ms. Bursh except as it relates to the area of statistical approaches. Z-Tel witness George Ford will address that subject separately.

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FFSC-RECORDS/REPORTING

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 **A.** My name is Cheryl Bursh. My business address is 1200 Peachtree Street,
3 Atlanta, Florida.

4

5 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL AND EDUCATIONAL**
6 **BACKGROUND.**

7 **A.** I am employed by AT&T as a Senior Policy Witness. My area of expertise is
8 the development of an effective methodology for measuring BellSouth's
9 performance in providing services to ALECs. My responsibilities include
10 developing Performance Measurements testimony and affidavits for
11 regulatory proceedings, as well as representing AT&T in performance
12 measurements workshops and hearings, including those held in Florida,
13 Louisiana, Florida, and North Carolina. I have held a variety of management
14 positions at AT&T over the last 19 ½ years, including the sale of large
15 business systems and telecommunications services, systems development for
16 operation support systems, and product marketing and technical support for
17 computer systems. I have a Bachelor of Science Degree from Johnson C.
18 Smith University and a Master of Science Degree from George Washington
19 University.

20

21 **Q. PLEASE STATE THE PURPOSE OF YOUR TESTIMONY.**

22 **A.** The purpose of my testimony is to describe the deficiencies of BellSouth's
23 Self Effectuating Enforcement Mechanism (SEEM) and to discuss the

1 reasons it is not an appropriate remedy plan to ensure that the competitive
2 local telecommunications markets envisioned by the 1996 Act will develop
3 and survive in Florida. This testimony does not specifically target concerns
4 relating to the Staff Proposal (Strawman) given that Mr. Stallcup, the
5 Commission's Supervisor of the Economics and Forecasting Section in the
6 Division of Economic Regulation, has made clear that the Strawman does not
7 serve as a specific proposal for a performance plan, but a starting point for
8 the discussion as to what a performance plan should look like.

9
10 **Q. HAS THE FEDERAL COMMUNICATIONS COMMISSION (FCC)**
11 **PROVIDED ANY GUIDANCE FOR DETERMINING IF AN**
12 **ENFORCEMENT PLAN IS ADEQUATE?**

13 **A.** Yes. The FCC has identified the following key characteristics¹ for an
14 effective enforcement plan which are as follows:

- 15 • potential liability that provides a meaningful and significant incentive to
16 comply with the designated performance standards;
- 17 • clearly articulated, pre-determined measures and standards, which
18 encompass a comprehensive range of carrier-to-carrier performance;
- 19 • a reasonable structure that is designed to detect and sanction poor
20 performance when it occurs;

¹ *FCC Memorandum Opinion And Order in the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York*, CC Docket No. 99-295, p. 214, ¶ 433, December 21, 1999.

- 1 • a self-executing mechanism that does not leave the door open
2 unreasonably to litigation and appeal; and
3 • reasonable assurances that the reported data is accurate.

4

5 **Q. DOES BELLSOUTH'S SEEM COMPLY WITH EACH OF THE KEY**
6 **REQUIREMENTS SET FORTH BY THE FCC?**

7 **A.** No. BellSouth's SEEM does not meet each of the key FCC requirements.

8

9 **Q. HOW IS BELLSOUTH'S SEEM DEFICIENT WITH RESPECT TO**
10 **THE KEY REQUIREMENTS SPECIFIED BY THE FCC?**

11 **A.** BellSouth's SEEM does not provide for potential liability that is a
12 meaningful and significant incentive to comply with the designated
13 performance standards.

14 BellSouth's SEEM does not adequately sanction and detect poor
15 performance.

16 BellSouth's measures and performance standards do not encompass a
17 comprehensive range of carrier-to-carrier performance derived from a
18 collaborative process with ALECs.

19 BellSouth's SEEM does not provide reasonable assurances that the reported
20 data is accurate.

21

22 **Q. DOES BELLSOUTH'S SEEM PROVIDE FOR POTENTIAL**
23 **LIABILITY THAT IS A MEANINGFUL AND SIGNIFICANT**

1 **INCENTIVE TO COMPLY WITH THE DESIGNATED**
2 **PERFORMANCE STANDARDS?(ISSUES 11.A, 11.C3, 12.A, 12.C3)**

3 **A.** No. The potential liability is reduced for the following reasons:

- 4 • SEEM's remedy calculation uses a factor that inappropriately
5 reduces BellSouth's liability.
- 6 • SEEM uses an inappropriate calculation methodology.
- 7 • SEEM includes an absolute cap.
- 8 • SEEM determines remedy amount based on transactions.

9 First, as a component of the SEEM design, the remedy calculation
10 uses a factor that inappropriately reduces BellSouth's liability. Use of this
11 factor, which is a slope of $\frac{1}{4}$ for even gross violations of parity, results in
12 BellSouth paying only a fraction of the maximum penalty amount. In other
13 words, the volume of transactions to which remedies would be applied is
14 reduced. Second, the actual remedy calculation methodology specified in
15 BellSouth's SEEM is inappropriate. This methodology, which determines
16 violations at the aggregate level and applies remedies at the disaggregated
17 level, is biased toward BellSouth. The SEEM calculation methodology
18 improperly excludes failed transactions from the cells with positive z scores,
19 even though these cells have already contributed to the aggregate z. The
20 result is that BellSouth will make smaller payments than if the volume
21 proportion, which is calculated from the state aggregate-z, is applied to all
22 cells. Therefore, BellSouth avoids paying remedies on all transactions that
23 represent a violation. BellSouth has included a number of steps in its

1 calculation which do no more than eliminate transactions which are subject to
2 remedies.

3

4 **Q. DO ADDITIONAL CALCULATIONS IN SEEM REDUCE THE**
5 **REMEDY AMOUNT PAID BY BELL SOUTH? (ISSUE 11.C.3, 12.C.3)**

6 **A.** Yes. The Benchmark Adjustment Table in BellSouth SEEM is not consistent
7 with the ALECs. BellSouth's Benchmark Adjustment Table allows for
8 additional mitigation that is unnecessary and inappropriate. What this means
9 is that BellSouth can fail more transactions before a non-compliance
10 determination is made.

11

12 **Q. CAN SEEM PROVIDE A MEANINGFUL AND SIGNIFICANT**
13 **INCENTIVE FOR BELL SOUTH TO COMPLY WITH THE**
14 **DESIGNATED PERFORMANCE STANDARDS IF SEEM INCLUDES**
15 **AN ABSOLUTE CAP? (ISSUES 19.A, 19.B, 20)**

16 **A.** No. The inclusion of an absolute cap decreases BellSouth's incentive to
17 comply with required performance standards. This is because absolute caps
18 serve to wrongfully limit BellSouth's liability. BellSouth's SEEM includes
19 an absolute cap of 36% of BellSouth's net operating revenue for Florida.
20 Regardless of how severe BellSouth's discriminatory performance might be,
21 BellSouth would pay no further remedies once the cap is reached. (Coon Dir.
22 p. 49) Consequently, BellSouth has no continuing incentive to correct its

1 performance deficiency. With an absolute cap, BellSouth has the opportunity
2 to evaluate the “cost” of retaining its market share through non-compliance.
3 In order for a remedy plan to be a meaningful and significant incentive for
4 compliant behavior, the procedural cap specified in the Staff proposal would
5 be more appropriate. The procedural cap would avoid the problems of an
6 absolute cap and would not provide BellSouth with the opportunity to
7 evaluate the “cost” of retaining share through non-compliance. Moreover,
8 unlike absolute caps, procedural caps do not absolve BellSouth from
9 consequences of performance deterioration.

10 Under a procedural cap, BellSouth would continue paying remedies
11 into a state fund until the Commission determines whether there is
12 justification for exceeding the procedural cap. Thus, contrary to Mr. Coon’s
13 testimony any payment made during the show cause hearing would be easily
14 recovered. Moreover, contrary to Mr. Coon’s testimony the procedural cap is
15 not the beginning of the process for setting absolute caps. Rather, the
16 procedural cap affords BellSouth the opportunity to present the Commission
17 with evidence as to why it should not be required to continue paying
18 remedies beyond the procedural cap even though its performance continues
19 to deteriorate.

20
21 **Q. IF SEEM DETERMINES REMEDIES BASED UPON TRANSACTION**
22 **VOLUMES, CAN SEEM PROVIDE FOR A MEANINGFUL AND**

1 **SIGNIFICANT INCENTIVE FOR BELLSouth TO COMPLY WITH**
2 **THE REQUIRED PERFORMANCE? (ISSUES 11.C.3, 12.C.3, 22)**

3 **A.** No. Accruing remedies on a per transaction basis as set forth in SEEM
4 minimizes BellSouth's liability because a significant number of ALECs are
5 currently at embryonic level of activity. The transaction volumes would be
6 very small and will not generate sufficient remedies to motivate compliant
7 behavior by BellSouth.

8 Remedies should accrue on a per measure basis.² As characteristic of
9 a measures-based plan, remedies should accrue at the level in which the
10 comparisons are made (i.e. at the measure/submeasure level). The remedy
11 amount is a direct function of the performance's departure from parity. The
12 measure-based plan does generate more remedies as the severity of the
13 discriminatory performance increases. Therefore, remedies should be applied
14 at the measure/submeasure level.

15 SEEM does not provide for potential liability that is a meaningful and
16 significant incentive to comply with designated performance standards. At a
17 time when ALECs are struggling to get into the local market, there would be
18 insufficient incentives to motivate non-discriminatory support. For this
19 reason, critical considerations such as Market Penetration Adjustments are
20 even more essential for ALECs to enter the market with new and advanced
21 services. Low ALEC penetration in the local market can be a good indication
22 that market suppression behaviors are occurring.

² The New York plan which was approved by the FCC does accrue remedies on a per measure basis.

1 Low ALEC market penetration warrants the need for special incentives
2 (consequences for market suppression) to open local markets. BellSouth has
3 strong business incentives and means to maintain its current monopolies
4 through the delivery of inadequate levels of operations support for ALECs. If
5 the consequences are inadequate, then market entry by the ALECs will
6 definitely be suppressed due to discriminatory support by BellSouth.

7
8 **Q. ARE THERE OTHER RECOMMENDATIONS BY BELLSOUTH**
9 **THAT LIMIT THE POTENTIAL LIABILITY THAT IS A**
10 **MEANINGFUL AND SIGNIFICANT INCENTIVE TO COMPLY**
11 **WITH THE DESIGNATED PERFORMANCE STANDARDS? (ISSUE**
12 **18)**

13 **A.** Yes. BellSouth supports limitations of liability for such events as the
14 submission of orders in unreasonable quantities or times. The ALECs are
15 unclear as to what constitutes “unreasonable quantities”. Additionally,
16 BellSouth’s OSS (i.e. gateway abnormalities) may be the cause of orders
17 submitted in what is perceived by BellSouth to be “unreasonable quantities.”
18 BellSouth’s OSS’s may also dictate the time when orders can be sent and
19 thereby received by BellSouth. As an example, the gateway may experience
20 an abnormality on Thursday and Friday which causes the orders to actually
21 be received in large sums on Saturday. BellSouth’s liability should not be
22 limited in this scenario. The ALEC is not the cause of the problem.
23 BellSouth also highlights a *force majeure* event as rationale to limit their

1 liability. While this may in fact occur, there is no particular reason to
2 believe that such events would result in disproportionate impacts on ALEC
3 customers as opposed to BellSouth customers. Therefore, *force majeure*
4 events do not warrant automatic exclusion from otherwise applicable
5 consequence. If such events occur, BellSouth should be permitted to pursue
6 relief, but relief should not be automatic. Regardless of BellSouth's excuse,
7 it is inappropriate to have automatic exclusion from otherwise applicable
8 consequences in a self-effectuating remedy plan.

9

10 **Q. DO THE MEASURES AND STANDARDS UPON WHICH SEEM IS**
11 **BASED ENCOMPASS A COMPREHENSIVE RANGE OF CARRIER-**
12 **TO-CARRIER PERFORMANCE AS A RESULT OF A**
13 **COLLABORATIVE PROCESS WITH ALTERNATIVE LOCAL**
14 **EXCHANGE CARRIERS? (ISSUE 2.A)**

15 **A.** No. The measures in SEEM are not the result of a comprehensive
16 collaborative proceeding. The FCC has stated that an effective enforcement
17 plan should have clearly articulated, pre-determined measures and standards,
18 which encompass a comprehensive range of carrier-to-carrier performance.
19 BellSouth inappropriately excludes many of the BellSouth SQM measures
20 from its remedy plan. The narrow scope of measures will result in critical,
21 customer-impacting areas not being monitored or subject to remedies.

22

1 The measures in BellSouth's SEEM are a subset of the BellSouth SQM and
2 BellSouth independently selected this subset of measures for inclusion. This
3 is unlike what the FCC supported in the Bell Atlantic Plan:

4 We also believe that the scope of performance covered
5 by the Carrier-to-Carrier metrics is sufficiently
6 comprehensive, and that the New York Commission
7 reasonably selected key competition-affecting metrics
8 from this list for inclusion in the enforcement plan.³

9 In the 1999/2000 Louisiana Workshops, BellSouth, independent of
10 the ALECS, selected measures for inclusion in VSEEM III (upon which
11 SEEM is based) from its SQM, which the ALECs previously objected to as
12 being too narrow in scope. As an example, BellSouth ignored ALEC
13 requests for critical hot cut measures which can contribute to negative
14 customer impacts such as whether the FOC was issued in time to allow the
15 ALEC to perform essential activities

16

17 **Q. ARE THE 13 ADDITIONAL MEASURES REFERENCED IN MR.**
18 **COON'S TESTIMONY INCLUDED IN THE ENFORCEMENT PLAN?**

19 No. Mr. Coon states that BellSouth has expanded the SQM to include 13
20 additional measures not specified in the Florida Staff proposal. Mr. Coon
21 does not, however, convey that fact that all of the 13 measures were not
22 included in SEEM. Mr. Coon neglects to mention, however, that BellSouth

1 independently selected only a subset of those measures to be included in
2 SEEM as Enforcement measures. BellSouth did not allow the ALECs to
3 specify measures for inclusion in SEEM. The additional measures which
4 BellSouth decided to omit from their remedy plan include the following:

- 5 ▪ Coordinated Customer Conversion – Average Recovery Time
- 6 ▪ Meantime to Notify ALEC of Network Outage
- 7 ▪ Recurring Charge completeness
- 8 ▪ Non-Recurring Charge Completeness
- 9 ▪ Database Update Interval
- 10 ▪ Database Update Accuracy
- 11 ▪ NXX and LRNs Loaded by LERG Effective Date
- 12 ▪ Notification of Interface Outages

13 BellSouth continues to imply that the measures in SEEM are patterned after
14 those used in New York and Texas. However, BellSouth has fewer than 82
15 submeasures subject to remedies while Texas has nearly 3000 submeasures
16 subject to remedies.⁴ Mr. Coon states in his Georgia testimony that the New
17 York and Texas Commissions charged the ALECs with communication of
18 the measurement set that is most “customer impacting.” BellSouth did not
19 allow the Florida ALECs to make a similar determination for SEEM. Again,
20 BellSouth made the decisions concerning measures included in BellSouth’s
21 remedy plan.

³ FCC Memorandum Opinion And Order in the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York, CC Docket no. 99-295, p. 218, para. 439, December 21, 1999.

1 **Q. DOES BELLSOUTH EXCLUDE CRITICAL MEASURES IN ITS SQM**
2 **FROM SEEM?**

3 **A.** Yes. BellSouth's SEEM limits monitoring of critical, customer-impacting
4 areas⁵ of performance. As an example, SEEM does not specify LNP-FOC
5 Timeliness or LNP- Reject Interval as Enforcement measures. Without a
6 FOC, ALECs cannot provide their customers with an expected date of
7 service. End user customers are not willing to rely on providers who cannot
8 provide something as simple as a service due date in a timely manner. SEEM
9 will not allow BellSouth's performance to be monitored in this area. For
10 many facilities-based ALECs, LNP orders are a critical aspect of their
11 business and therefore monitoring Bellsouth's performance in this area is
12 critical to ALECs.

13
14 **Q. DOES BELLSOUTH INAPPROPRIATELY EXEMPT SOME**
15 **ENFORCEMENT MEASURES FROM TIER I CONSEQUENCES?**

16 **A.** Yes. BellSouth's SEEM inappropriately excludes the following Enforcement
17 measures⁶ from Tier I remedies:

- 18 ▪ Invoice Accuracy
- 19 ▪ Mean Time To Deliver Invoice
- 20 ▪ Usage Data Delivery Accuracy
- 21 ▪ Reject Interval

⁴ BellSouth Telecommunications, Georgia Public Service Commission, June 29, 2000, Dave Coon's Direct Testimony, page 17.

⁵ See Additional Measures specified in Karen Kinard's Direct testimony.

⁶ Enforcement Measures are SQM measures selected by BellSouth for inclusion in SEEM.

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▪ FOC Timeliness

This means that an individual ALEC can experience excessively long intervals before receiving FOCs from BellSouth and BellSouth would not incur any remedy. In other words, BellSouth can hinder an individual ALEC's ability to provide their customers with timely notice of service without a consequence to BellSouth. This is attributed to the fact that FOC Timeliness for individual ALECs would not be monitored in SEEM. Unlike a collaborative process for developing a remedy plan, BellSouth did not include ALECs in Florida in making Tier I or Tier II measure designations.

Q. DOES SEEM HAVE THE ABILITY TO ADEQUATELY DETECT AND SANCTION POOR PERFORMANCE?

A. No. The level of disaggregation is insufficient. The retail analogs are inappropriate. The measures are inadequate and therefore can hinder the ability to detect discrimination. Additionally, SEEM includes an absolute cap and a questionable methodology for invoking Tier II remedies which decrease sanctions incurred by BellSouth.

The structure of the BellSouth SEEM can allow non-compliant performance to be masked and not even subject to remedies. An effective enforcement plan should have a reasonable structure that is designed to detect and sanction poor performance when it occurs.

1 **Q. CAN YOU ELABORATE ON HOW INSUFFICIENT**
2 **DISAGGREGATION HINDERS THE ABILITY TO DETECT POOR**
3 **PERFORMANCE?**
4 **(ISSUE 2.B)**

5 A. Yes. The level of disaggregation in SEEM is inadequate and facilitates
6 consolidation of dissimilar products for comparisons. Disaggregation should
7 proceed to a level where like-to-like comparisons can be made. BellSouth
8 states that its position endorses “like-to-like” comparisons. However,
9 BellSouth’s position is contradicted by the inadequate product
10 disaggregation that continues to be a characteristic of SEEM. Within SEEM,
11 BellSouth continues to aggregate some UNE loops together even though the
12 processes (i.e. intervals) for the various loops differ from one another. For
13 example, the interval for one DS1 Loops is 23 days and the interval for one
14 2-Wire Analog Loops is 4 days.⁷ This level of disaggregation is insufficient
15 and does not contribute to “like-to-like” comparisons. Likewise, the product
16 disaggregation for enforcement measures in Staff’s proposal is insufficient.

17 In his testimony, Mr. Coon emphasizes that BellSouth has more
18 disaggregation than that represented in the Staff Proposal. He further
19 expresses this by stating that Staff Proposal had 7 levels of disaggregation
20 for Reject Interval and that BellSouth had 17. What he failed to state is that

⁷ BellSouth Products & Services Interval Guide – Network And Carrier Services, Customer Guide
CG-INTL-001, Issue 3b-December 2000

1 these 17 levels of disaggregation are absolutely meaningless to the remedy
2 plan. Specifically, the remedy plan only specifies one level of disaggregation
3 for the Reject Interval.

4 BellSouth proposes to rely upon overly aggregated results. Such
5 aggregation masks differences and makes detection of inferior performance
6 less likely. As discussed earlier, insufficient product disaggregation will
7 allow BellSouth to mask discrimination and thereby influence the type and
8 pace of developing competition. In SEEM, discrimination of high-
9 revenue/low volume products such as DS1s or DS3s can easily be concealed
10 given that they are consolidated with a dissimilar high volume product such
11 as Analog Loops.

12

13 **Q. CAN YOU ELABORATE ON HOW INAPPROPRIATE RETAIL**
14 **ANALOGS HINDER THE ABILITY TO DETECT POOR**
15 **PERFORMANCE? (ISSUE 9)**

16 **A.** Yes. On a measure such as Order Completion Interval, BellSouth can actually
17 report compliant support even though they are providing discriminatory
18 support in reality. As an example, the retail analog for OCI - UNE Loops are
19 Retail Residence & Business Dispatch. A significant percent of the UNE
20 Loop observations could be UNE Analog Loops which are all dispatch-in.
21 Dispatch-in signifies that the work is done within the Central Office.
22 Dispatch usually refers to service where the work is done in the field or
23 outside of the Central Office. Clearly, work done within the Central Office

1 has a shorter interval than work done away from the Central Office. Given
2 the retail analog is designated as Retail Residence & Business Dispatch,
3 BellSouth would always appear to be providing longer intervals for itself
4 (compliant support) for this example primarily because the retail analog is
5 inappropriate.

6

7 **Q. CAN YOU ELABORATE FURTHER ON HOW SEEM FAILS TO**
8 **SANCTION POOR PERFORMANCE?**

9 A. Yes. First, as stated earlier in my testimony, SEEM has an absolute cap that
10 limits the amount of remedies paid by BellSouth for discriminatory
11 performance. An absolute cap sends the signal that once BellSouth's
12 performance deteriorates to a particular level, then further deterioration is
13 irrelevant and results in no consequences if an absolute cap is established.
14 An absolute cap also provides BellSouth with the means to evaluate the cost
15 of market share retention through the delivery of non-compliant performance.
16 Thus, once BellSouth's performance deteriorates to a level where it reaches
17 the absolute cap, any further deterioration in Bellsouth's performance will not
18 generate remedy payments and will go unsanctioned, thereby removing the
19 incentive for BellSouth to provide compliant performance.

20 Second, BellSouth's SEEM bases compliance at the ALEC aggregate
21 level on 3 months of data. This 3-month aggregation of data will mask
22 discriminatory performance and will also allow non-compliance to occur
23 without a consequence. BellSouth could potentially have 2 consecutive

1 months of industry-wide, non-compliant performance and not incur any
2 consequences if the third month was complaint and the third month's
3 transactions were a larger volume than the previous 2 months. It is
4 unacceptable for ALEC customers to receive deplorable service for two
5 consecutive months and BellSouth not face some consequences. Industry
6 level performance should be assessed for each month's activities.
7 Aggregating results across ALECs within a single month already makes
8 detection of discrimination more difficult, due to likely greater variation in
9 the underlying data. To further dilute the ability to detect discrimination with
10 the possibility of additional averaging across 3 months is simply an attempt
11 by BellSouth to avoid the application of otherwise appropriate consequences.
12 Additionally, it appears that there are no special consequences for chronic
13 violations at the industry level in SEEM.

14
15 **Q. ARE THE MEASURES IN SEEM SUFFICIENT IN SCOPE TO**
16 **MONITOR FOR BACKSLIDING?**

17 **A.** No. BellSouth proposes an inadequate set of measures and, as a result,
18 backsliding can occur in many operational areas without any consequence.
19 The measures set forth by BellSouth do not cover the full scope of ILEC
20 support required for unfettered local market competition to develop. Many
21 potentially important aspects of performance will not be examined due to the
22 inadequate set of measures represented in the BellSouth proposal.
23 BellSouth's SEEM measures are inadequate to determine discriminatory

1 performance and should be augmented by the measures requested by the
2 ALECs and included in Ms. Kinard's direct testimony. BellSouth's current
3 SEEM proposal only includes a subset of measures reflected in the BellSouth
4 February 2001 SQM filed in Florida.

5 BellSouth's SEEM omits measurements that are critical to assuring
6 non-discrimination. Any remedy plan must cover all forms of operational
7 support required by the Act. Both blatant (directly and immediately customer
8 observable) and subtle discrimination (ALEC operational support) will
9 ultimately impact customers. Due to the many omitted measures,
10 BellSouth's SEEM does hinder sanctions for non-compliance.

11

12 **Q. DOES SEEM PROVIDE REASONABLE ASSURANCES THAT THE**
13 **REPORTED DATA IS ACCURATE.**

14 **A.** No. SEEM incorporates an audit to certify the current year aggregate level
15 reports for both BellSouth and the ALECs. SEEM, however, does not require
16 a comprehensive audit of BellSouth's performance measurement data
17 collection, storage, retrieval and reporting processes, along with end-to-end
18 tracking of orders through BellSouth's systems and processes to ensure that
19 reported performance is accurate. An effective enforcement plan would
20 require a comprehensive performance measurement audit to provide
21 reasonable assurances that the reported data and performance are accurate.

22 BellSouth states that an auditing firm will certify that the Tier I and
23 Tier II remedies were paid. It is even more critical that an auditing firm
24 confirm that BellSouth has indeed appropriately calculated remedies and

1 properly invoked remedies that would be commensurate with the performance
2 rendered to each ALEC and the industry at large.

3

4 **Q. ARE REMEDIES FOR LATE, INCOMPLETE AND INACCURATE**
5 **PERFORMANCE REPORTING INCLUDED IN OTHER REMEDY**
6 **PLANS APPROVED BY THE FCC? (ISSUES 6.A, 6.B, 5.A, 5.B)**

7 **A.** Yes. The SWBT remedy plan includes a payment for late and incomplete
8 performance reports. Specifically, the SWBT plan includes a payment of
9 \$5000.00 per day past the due date and \$1000.00 per day for each missing
10 performance report. Remedies should be assessed and paid by BellSouth to
11 the Commission for late, inaccurate and incomplete reports. ALECs have
12 already experienced late submission of performance reports by BellSouth.
13 Additionally, the performance reports have even been inaccurate and
14 incomplete.

15

16 **Q. WHEN SHOULD BELL SOUTH BE REQUIRED TO MAKE**
17 **PAYMENTS FOR TIER I AND TIER II NONCOMPLIANCE ?**
18 **(ISSUE 13)**

19 **A.** Payment should be on or before the 15th business day following the due date
20 of the reported performance results upon which consequences are based.
21 Waiting an additional forty-five days, as recommended by BellSouth, seems
22 completely unreasonable.

23

1 **Q. DOES BELLSOUTH INHIBIT THE ALECS' ABILITY TO**
2 **VALIDATE REPORTED PERFORMANCE? (ISSUES 3.A, 3.B)**

3 **A.** Yes. Even BellSouth admits to not providing all the raw data needed by
4 ALECs to validate BellSouth's reported performance. (Coon Direct
5 Testimony, p.16). BellSouth is currently not providing access to raw data for
6 a number of measures such as the following:

7 Ordering

- 8 • LNP_PCT_Reject_Interval_Service_Requests_Total_Me
9 ch.txt
- 10 • LNP_PCT_Reject_Interval_Service_Requests_Partial_
11 Mech.txt
- 12 • LNP_PCT_Reject_Interval_Service_Requests_Fully_Me
13 ch.txt
- 14 • LNP_Reject_Interval_Service_Requests_Total_Mech.txt
- 15 • LNP_Reject_Interval_Service_Requests_Partial_Mech.t
16 xt
- 17 • LNP_Reject_Interval_Service_Requests_Fully_Mech.txt
- 18 • LNP_Firm_Order_Confirmation_Total_Mech.txt
- 19 • LNP_Firm_Order_Confirmation_Partial_Mech.txt
- 20 • LNP_Firm_Order_Confirmation_Fully_Mech.txt

21 Provisioning

- 22 • LNP_Total_Order_Cycle_Time_Mechanized.txt

- 1 • LNP_Total_Order_Cycle_Time_Mechanized_with_Appointment_codes.txt
- 2
- 3 • LNP_Percent_Missed_Installation_Appointments.txt
- 4 • LNP_Disconnects.txt

5 Billing

- 6 • Invoice Accuracy CLEC(Region)
- 7 • Mean Time to Deliver Invoices CLEC(Region)
- 8 • Usage Data Delivery Accuracy CLEC
- 9 • Usage Timeliness & Completeness CLEC

10

11 For many facilities-based ALECs, LNP orders are a critical aspect of their
12 business. Therefore, BellSouth prohibits ALECs from validating the reported
13 performance due to inhibiting access to LNP data. An effective remedy plan
14 should provide performance reports and the supporting raw data for all
15 measures in the plan.

16

17 **Q. IS ROOT CAUSE ANALYSIS USEFUL? (ISSUE 10)**

18 **A.** Yes. Root cause analysis is a useful procedure for building actions plans for
19 unacceptable performance and should be incorporated within a performance
20 measurement system, but should not serve as a vehicle for delaying or
21 otherwise avoiding payment of identified performance failures. Performance
22 failures can have detrimental effects on Florida's consumers. Procedures,
23 such as root cause analysis, which could potentially remedy recurrence of

1 failures, are definitely essential. Root cause analysis can and should be
2 implemented such that the self-effectuating aspect of the remedy plan is not
3 impacted.

4

5 **Q. SHOULD IMPLEMENTATION OF A REMEDY PLAN ADOPTED BY**
6 **THIS COMMISSION BE DELAYED UNTIL AFTER BELLSOUTH**
7 **RECEIVES 271 APPROVAL? (Issue 8)**

8 **A.** No. The remedy plan should go into effect as soon as it is ordered by this
9 Commission so that the benefits of its effect on the marketplace can be
10 realized. The plan can be used to measure compliance, so that the state
11 regulators can make the appropriate recommendation to the FCC. Also, the
12 performance measurement systems should be tested prior to 271 approval, so
13 that any backsliding can be deterred. Further, putting the remedy plan in
14 effect immediately would illustrate to regulatory authorities that BellSouth is
15 committed to irreversibly opening the local market to competition.

16

17 **Q. WAS SEEM CREATED THROUGH AN INDUSTRY**
18 **COLLABORATIVE?**

19 **A.** No. BellSouth did not request that ALECs contribute their ideas in the
20 establishment of SEEM which is based on VSEEM III. Many of the
21 components, such as measures, remedy calculation and even the parameter
22 delta value, of SEEM were decided independently by BellSouth. As an
23 example, the workshops during the Louisiana proceeding did not address the

1 value of parameter delta. It is obvious that SEEM components are a
2 BellSouth decision since ALEC coalitions through out the region have
3 consistently disagreed with BellSouth's position on the value of parameter
4 delta, transaction-based nature of SEEM and the absolute cap contained in
5 SEEM.

6

7 **Q. SHOULD THE THIS COMMISSION ADOPT BELLSOUTH'S SEEM**

8 **A.** No. BellSouth's SEEM proposal will not provide adequate incentives, as
9 their cap implies, to prevent or correct "backsliding" performance. The
10 measures included in SEEM do not provide the necessary information
11 regarding support activities essential to the development of competition. In
12 the few instances where BellSouth proposes to permit examination of its
13 performance, it offers inadequate levels of disaggregation that afford
14 BellSouth the opportunity to mask discrimination. Further, BellSouth's
15 SEEM includes a cap on remedies which allows BellSouth to escape
16 consequences for discriminatory performance. BellSouth also applies a
17 calculation methodology that eliminates failed transactions which are subject
18 to remedies.

19 The FCC has set forth a framework for analyzing the reasonableness
20 of a proposed enforcement plan, which included 5 key aspects that a
21 performance assurance plan should include. BellSouth's SEEM clearly falls
22 outside this prescribed zone of reasonableness. Therefore, this Commission
23 should not adopt BellSouth's SEEM.

- 1 Q. DOES THIS CONCLUDE YOUR TESTIMONY?
- 2 A. Yes.