ORIGINAL

McWHIRTER REEVES
ATTORNEYS AT LAW

TAMPA OFFICE:
400 NORTH TAMPA STREET, SUITE 2450
TAMPA, FLORIDA 33602
P. O. BOX 3350 TAMPA, FL 33601-3350
(813) 224-0866 (813) 221-1854 FAX

PLEASE REPLY TO:
TALLAHASSEE

TALLAHASSEE OFFICE:
117 SOUTH GADSDEN
TALLAHASSEE, FLORIDA 32301
(850) 222-2525
(850) 222-5606 FAX

March 30, 2001

VIA HAND DELIVERY

Blanca S. Bayo, Director
Division of Records and Reporting
Betty Easley Conference Center
4075 Esplanade Way
Tallahassee, Florida 32399-0870

Re: Docket No.: 000121-TP

Dear Ms. Bayo:

On behalf of Z-Tel Communications, Inc., enclosed for filing and distribution are the original and 15 copies of the following:

- Z-Tel's Prehearing Statement.

Please acknowledge receipt of the above on the extra copy and on the copy of this letter and return the stamped copies to me. Thank you for your assistance.

Sincerely,

Joe A. McGlothlin

Joseph A. McGlothlin

JAM/kmr
Enclosure

APP
CAF
CMP
COM 3
CTR
ECR
LEG 1
OPC
PAI
RGO
SEC 1
SER
OTH

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the Establishment of Operations Support Systems Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies
_____/

Docket No.: 000121-TP
Filed: March 30, 2001

Z-TEL'S PREHEARING STATEMENT

Pursuant to Order No. PSC-01-0242-PCO-TP, issued on January 26, 2001, and through its undersigned counsel, Z-Tel Communications, Inc. ("Z-Tel") hereby submits its Prehearing Statement in the above docket.

(A) Identification of witnesses to be called:

Z-Tel will call as its witnesses John Rubino and Dr. George S. Ford.

Mr. Rubino will urge the Commission to take the steps needed to avoid the poor initial experience that New York endured as a result of inadequately defined metrics of that plan. The steps include an opportunity to evaluate the plan's performance in the commercial marketplace, and ongoing oversight by the Commission.

Dr. Ford will propose specific plan parameters. In his testimony he will emphasize needed refinements to the Balancing Critical Value statistical technique of measuring test results to detect discrimination.

Witnesses:	Testimony Filed	Issues:
1. Dr. George S. Ford	(Direct and Rebuttal)	2(b), 8, 10, 11 (a,b, c1-2, 5), 12 (a,b,c1-5),18, 19 (a-b), 23
2. John Rubino	(Direct)	7

(B) A description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witness sponsoring each:

Z-Tel will sponsor the following exhibits:

Exhibit	Witness	Description
GSF-1	Ford	Histogram of the ModZ
GSF-2	Ford	Type II Error at the 5% Significance Level
GSF-3	Ford	Location of the Alternative Distribution with Different Delta Values
GSF-4	Ford	The Implicit Delta Value with a BCV Ceiling
GSF-5	Ford	Allowable ALEC Means
GSF-6	Ford	Data for Florida from ARMIS 43-01
GSF-7(rebuttal)	Ford	Balancing Critical Value Comparison

(C) Statement of Basic Position:

The performance assessment plan is one of the most important regulatory issues facing the Commission. Such a program is needed now to protect competition, which is most vulnerable in the early stages of development, from discrimination. Further, if and when BellSouth is permitted to participate in the interexchange market, the performance assessment plan will be the first line of defense against the erosion of its commitment to provide parity of service to its competitors in the local exchange market. This Commission must design a plan that will assure fair competition among providers of local exchange service. Whether or not BellSouth finds the terms of the plan acceptable

is immaterial, because any effective plan is incompatible with the profit-maximizing incentives of BellSouth. The experience in other jurisdictions teaches that the Commission should ensure that measures are well defined; that the appropriate data is captured for the purpose; that the requirements have been subjected to real experience in the commercial marketplace; and that the Commission retains the authority and flexibility to modify the program as needed.

One of the key aspects of the performance assessment plan is the statistical technique devised to identify discrimination. Conceptually, Z-Tel agrees with the proposition that the possibility of testing errors should be mitigated by "balancing" (offsetting) the statistical probability of finding discrimination when none exists with the probability of finding no discrimination when it does exist. However, the balancing technique is highly sensitive to assumptions of differences in the means of the ALEC and of BellSouth, as well as sample size. Unless safeguards are built into the mechanism, the "balancing" feature will frequently produce absurd, counterproductive results. The Commission should recognize that, once a level of statistical significance is reached that assures there is virtually no possibility of imposing a penalty on BellSouth when none is deserved, additional "mitigation" serves only to bias the test by needlessly making discrimination harder to detect. To avoid this outcome, as well as to maintain the integrity of the statistical technique and the usefulness of the performance assessment mechanism, Z-Tel advocates the use of either a "delta function" that varies the assumed difference in means differences with sample size (preferred) or, alternatively, a floor on the "balancing critical value."

The transaction-based payment regime of the BellSouth Plan is so flawed that BellSouth's own experts are critical of the approach. The measure-based payment approach recommended by the ALECs is both reasonable and flexible, giving the Commission substantial leeway in adjusting the mechanism to satisfy its own requirements.

Finally, the level of aggregation proposed by BellSouth is excessive. There is no reason to aggregate widely disparate products in a single statistical procedure, but such aggregation of statistics across product lines could mask occurrences of discrimination.

(D)-(E)-(F) --Statements of each question of fact, law, and/or policy the party considers at issue, the party's position on each such issue, and which of the party's witnesses will address the issue:

A. How should the results of KPMG's review of BellSouth performance measures be incorporated into this proceeding?

1.a. What are the appropriate service quality measures to be reported by BellSouth?

Z-Tel adopts the position stated by the ALEC Coalition.

b. What are the appropriate business rules, exclusions, calculations, and levels of disaggregation and performance standards for each?

Z-Tel adopts the position stated by the ALEC Coalition.

2.a. What are the appropriate Enforcement Measures to be reported by BellSouth for Tier 1 and Tier 2?

Z-Tel adopts the position stated by the ALEC Coalition.

2.b. What are the appropriate levels of disaggregation for compliance reporting?

The appropriate levels of disaggregation are those at the cell or submeasure level that are associated with the modified Z test. Aggregating different tests across product lines serves no useful purpose and could have the effect of masking discrimination. (Ford)

3.a. What performance data and reports should be made available by BellSouth to ALECs?

Z-Tel adopts the position stated by the ALEC Coalition.

3.b. Where, when, and in what format should BellSouth performance data and reports be made available?

Z-Tel adopts the position stated by the ALEC Coalition.

4.a. Does the Commission have the legal authority to order implementation of a self-executing remedy plan?

b. With BellSouth's consent?

c. Without BellSouth's consent?

Yes. In MCI v. BellSouth, 112 F. Supp. 2d 1286 (N.D.Fl., 2000), the United States District Court, Northern District of Florida rejected the proposition that this Commission has no authority to arbitrate a request for a performance measurement plan. Further, this Commission has recognized its authority to implement such policies on a generic basis rather than in individual arbitrations.

Order No. PSC-99-1078-PCO-TP, issued May 26, 1999.

5.a. Should BellSouth be penalized when BellSouth fails to post the performance data and reports to the Web site by the due date?

Z-Tel adopts the position stated by the ALEC Coalition.

5.b. If so, how should the penalty amount be determined, and when should BellSouth be required to pay the penalty?

Z-Tel adopts the position stated by the ALEC Coalition.

6.a. Should BellSouth be penalized if performance data and reports published on the BellSouth web site are incomplete or inaccurate?

Z-Tel adopts the position stated by the ALEC Coalition.

6.b. If so, how should the penalty amount be determined, and when should BellSouth be required to pay the penalty?

Z-Tel adopts the position stated by the ALEC Coalition.

7. What review process, if any, should be instituted to consider revisions to the Performance Assessment Plan that is adopted by this Commission?

Z-Tel has not proposed a definitive review process. Generally, however, to avoid the costly mistakes that occurred in other jurisdictions, Z-Tel urges the Commission to require that any performance assessment plan carefully define the metrics; to require that the plan be tested in the commercial market; and to retain the flexibility and authority to make ongoing adjustments as are needed. (Rubino)

8. When should the Performance Assessment Plan become effective?

The performance assessment plan should be placed into effect as quickly as possible. It is needed to protect and foster competition in the local exchange market, to the benefit of consumers, by ensuring that BellSouth will comply with the terms of interconnection agreements between

BellSouth and ALECs. Accordingly, it should not be withheld until BellSouth receives authority to participate in the interexchange market. At the same time, experience with the plan gained prior to the 271 application will be valuable in gauging the efficacy of the plan and the degree to which BellSouth is providing nondiscriminatory service. (Ford)

9. What are the appropriate Enforcement Measurement Benchmarks and Analogs?

Z-Tel adopts the position stated by the ALEC Coalition.

10. Under what circumstances, if any, should BellSouth be required to perform a root cause analysis?

The plan should contain a self-effectuating "root cause analysis" requirement that is triggered by repeated or severe discrimination. There is no reasonable basis on which to believe that enforcement of the provisions of the plan will be a sufficient incentive to lead BellSouth to initiate such an analysis. (Ford)

11a. What is the appropriate methodology that should be employed to determine if BellSouth is providing compliant performance to an individual ALEC? (Tier 1)

The appropriate methodology is the modified Z-test, refined to incorporate either the "Delta function" or a floor to the Balancing Critical Value, as advocated by Z-Tel witness George Ford. Such a refinement is needed to overcome the deficiencies and shortcomings inherent in the basic BCV methodology that otherwise will lead to results absurdly biased against the ability to detect discrimination. (Ford)

11b. How should parity be defined for purposes of the Performance Assessment Plan?

The term "parity" refers to absolute equality of service. While it may be desirable to adopt a statistical regime that departs from true parity for the purpose of accommodating the needs of a

testing mechanism based on sampling, the Commission should bear the concept of true parity in mind and require that any departures from the objective be as limited as possible. (Ford)

11c. What is the appropriate structure?

1. What is the appropriate statistical methodology?

The appropriate methodology is the modified Z-test, refined to incorporate either the "Delta function" or a floor to the balance and critical value, as advocated by Z-Tel witness George Ford. Such a refinement is needed to overcome the deficiencies and shortcomings inherent in the basic BCV that would otherwise lead to results absurdly biased against the ability to detect discrimination. (Ford)

2. What is the appropriate parameter delta, if any?

The appropriate parameter delta is that derived by the application of the "Delta function" advocated by Z-Tel witness George Ford. The "Delta function" is designed to vary delta with sample size and thereby avoid the prejudicial skewing of the balancing mechanism that can occur when mitigation is carried to unnecessary and counterproductive extremes. (Ford)

3. What is the appropriate remedy calculation?

Z-Tel adopts the position stated by the ALEC Coalition.

4. What is the appropriate benchmark table for small sample sizes?

Z-Tel adopts the position stated by the ALEC Coalition.

5. Should there be a floor on the balancing critical value?

A floor to the balancing critical value would be an acceptable alternative to the use of the "Delta function." While Z-Tel prefers the "Delta function," either alternative has the effect of preventing the excessive mitigation that can lead to a needlessly skewed test. Absent one adjustment

or the other, the Balancing Critical Value methodology will too frequently yield absurdly low significance levels, which signify tests that are so biased as to be incapable of detecting a deviation from parity. (Ford)

12.a. What is the appropriate methodology that should be employed to determine if BellSouth is providing compliant performance on a statewide ALEC-aggregate basis? (Tier 2)

See Z-Tel's position on 11.a. above.

12.b. How should parity be defined for purposes of the Performance Assessment Plan?

See Z-Tel's position on 11.b. above.

12c. What is the appropriate structure?

1. What is the appropriate statistical methodology?

2. What is the appropriate parameter delta, if any?

3. What is the appropriate remedy calculation?

4. What is the appropriate benchmark table for small sample sizes?

5. Should there be a floor on the balancing critical value?

See Z-Tel's position on 11.c. above.

13. When should BellSouth be required to make payments for Tier 1 and Tier 2 noncompliance, and what should be the method of payment?

Z-Tel adopts the position stated by the ALEC Coalition.

14.a. Should BellSouth be required to pay interest if BellSouth is late in paying an ALEC the required amount for Tier 1?

Z-Tel adopts the position stated by the ALEC Coalition.

14.b. If so, how should the interest be determined?

Z-Tel adopts the position stated by the ALEC Coalition.

15. Should BellSouth be fined for late payment of penalties under Tier 2? If so, how?

Z-Tel adopts the position stated by the ALEC Coalition.

16. What is the appropriate process for handling Tier 1 disputes regarding penalties paid to an ALEC?

Z-Tel adopts the position stated by the ALEC Coalition.

17. What is the appropriate mechanism for ensuring that all penalties under Tier 1 and Tier 2 Enforcement Mechanisms have been paid and accounted for?

Z-Tel adopts the position stated by the ALEC Coalition.

18. What limitation of liability, if any, should be applicable to BellSouth?

The procedural cap should be 39% of net revenues. To adopt an absolute cap would be to remove any incentive to adhere to standards beyond that point. (Ford)

19.a. What type of cap, if any, is appropriate for inclusion in the Performance Assessment Plan?

A procedural cap, rather than an absolute cap is the appropriate choice. An absolute cap would serve only to remove any motivation to comply once that limit has been reached. (Ford)

19.b. What is the appropriate dollar value of a cap if applicable?

A dollar value equal to 39% of net revenues is appropriate. (Ford)

20. What process, if any, should be used to determine whether penalties in the excess of the cap should be required?

Z-Tel adopts the position stated by the ALEC Coalition.

21. If there is a cap, for what period should the cap apply?

Z-Tel adopts the position stated by the ALEC Coalition.

22. Should the Performance Assessment Plan include a Market Penetration Adjustment, and if so how should such an adjustment be structured?

Z-Tel adopts the position stated by the ALEC Coalition

23. Should the Performance Assessment Plan include a Competitive Entry Volume Adjustment, and if so how should such an adjustment be structured?

Yes, if a transactions-based payment method is used, there should be a Competitive Entry Volume Adjustment in the form of a minimum payment. (Ford)

24.a. Should periodic third-party audits of Performance Assessment Plan data and reports be required?

Z-Tel adopts the position stated by the ALEC Coalition.

24.b. If so, how often should audits be conducted, and how should the audit scope be determined?

Z-Tel adopts the position stated by the ALEC Coalition.

25. If periodic third-party audits are required, who should be required to pay the cost of the audits?

Z-Tel adopts the position stated by the ALEC Coalition.

26. Who should select the third-party auditor if a third-party audit is required?

Z-Tel adopts the position stated by the ALEC Coalition.

27.a. Should an ALEC have the right to audit or request a review by BellSouth for one or more selected measures when it has reason to believe the data collected for a measure is flawed or the report criteria for the measure is not being adhered to?

Z-Tel adopts the position stated by the ALEC Coalition.

27.b. If so, should the audit be performed by an independent third party?

Z-Tel adopts the position stated by the ALEC Coalition.

28. Should BellSouth be required to retain performance measurement data and source data, and if so, for how long?

Z-Tel adopts the position stated by the ALEC Coalition.

29. What is the appropriate definition of "affiliate" for the purpose of the Performance Assessment Plan?

Z-Tel adopts the position stated by the ALEC Coalition.

30.a. Should BellSouth be required to provide "affiliate" data as it relates to the Performance Assessment Plan?

Z-Tel adopts the position stated by the ALEC Coalition.

30b. If so, how should data related to BellSouth affiliates be handled for purposes of

1. **Measurement reporting?**
2. **Tier 1 compliance?**
3. **Tier 2 compliance?**

Z-Tel adopts the position stated by the ALEC Coalition.

(G) A statement of issues that have been stipulated to by the parties:

Z-Tel is aware of none at this time.

(H) A statement of all pending motions or other matters the party seeks action upon:

At the time this statement is being prepared, Z-Tel's Motion for Leave to Submit Revised Testimony of George S. Ford is pending.

(I) A statement identifying the parties' pending request or claims for confidentiality:

None.

(J) A statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore:

None.

(K) A statement identifying any decision or pending decision of the FCC or any court that has or may either preempt or otherwise impact the Commission's ability to resolve any of the issues presented or the relief requested in this matter:

Z-Tel is aware of none at this time.

Joseph A. McGlothlin
McWhirter, Reeves, McGlothlin, Davidson,
Decker, Kaufman, Arnold & Steen, P.A.
117 South Gadsden Street
Tallahassee, Florida 32301
(850) 222-2525

Michael B. Hazzard
Kelley Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, DC 20036
(202) 955-9600

Attorneys for Z-Tel Communications, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Z-Tel's Prehearing Statement has been furnished by hand delivery(*) or U.S. mail on this 30th day of March, 2001 to:

(*)Tim Vaccaro
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Marsha Rule
AT&T
101 North Monroe Street, Suite 700
Tallahassee, Florida 32301-1549

Nancy B. White
c/o Nancy H. Sims
BellSouth Telecommunications, Inc.
150 South Monroe Street, Suite 400
Tallahassee, FL 32301-1556

Nanette Edwards
ITC Deltacom
4092 South Memorial Parkway
Huntsville, AL 35802

Patrick Wiggins/Charles J. Pellegrini
Katz, Kutter, Haigler, Alderman,
Bryant & Yon, P.A.
Post Office Box 1877
Tallahassee, Florida 32302

Catherine Boone
Covad Communications Company
Ten Glenlake Parkway
Suite 650
Atlanta, Georgia 30328

Floyd Self
Messer, Caparello & Self, P.A.
215 South Monroe Street, Suite 701
Tallahassee, Florida 32302-1876

Rodney L. Joyce
Shook, Hardy & Bacon, LLP
600 14th Street, N.W., Suite 800
Washington, D.C. 20005-2005

Michael A. Gross
Florida Cable Telecommunications
Association
246 E. 6th Avenue
Tallahassee, FL 32303

Kimberly Caswell
Verizon Select Services, Inc.
Post Office Box 110, FLTC0007
Tampa, Florida 33601-0110

Scott A. Sapperstein
Intermedia Communications, Inc.
3625 Queen Palm Drive
Tampa, Florida 33619-1309

Jeffrey Wahlen
Ausley Law Firm
Post Office Box 391
Tallahassee, Florida 32301

Donna Canzano McNulty
MCI WorldCom, Inc.
325 John Knox Road
The Atrium Building, Suite 105
Tallahassee, Florida 32303

Glenn Harris
North Point Communications, Inc.
222 Sutter Street, 7th Floor
San Francisco, CA 94108

Kenneth Hoffman/John Ellis
Rutledge Law Firm
Post Office Box 551
Tallahassee, Florida 32302

Andrew Isar
Telecommunications Resellers Assoc.
4312 92nd Avenue, N.W.
Gig Harbor, WA 98335

Charles J. Rehwinkel/Susan Masterton
Sprint-Florida, Incorporated
P.O. Box 2214
Tallahassee, FL 32316-2214

John Kerkorian
5607 Glenridge Drive
Suite 310
Atlanta, Georgia 30342

Mark E. Buechele
Koger Center
Ellis Building
Suite 200
1311 Executive Center Drive
Tallahassee, Florida 32301-5027

(*) Lisa Harvey
Florida Public Service Commission
2540 Shumard Oak Boulevard
Gunter Building, Room 235-D
Tallahassee, Florida 32399-0850

Monica M. Barone, Director
State Regulation
Birch Telecom of the South, Inc.
8601 Six Forks Road, Suite 463
Raleigh, NC 27516

Peter Dunbar/Karen Camechis
Pennington, Moore, Wilkinson, Bell &
Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302

Laura L. Gallagher
Laura L. Gallagher, P.A.
101 East College Avenue, Suite 302
Tallahassee, Florida 32301

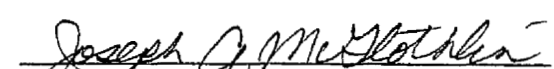
Angela Green, General Counsel
Florida Public Telecommunications Assoc.
125 S. Gadsden Street, Suite 200
Tallahassee, Florida 32301-1525

Bruce May
Holland & Knight
Post Office Drawer 810
Tallahassee, Florida 32302

Jonathan E. Canis
Michael B. Hazzard
Kelly Drye & Warren, LLP
1200 19th Street, NW, Fifth Floor
Washington, D.C. 20036

Stephen P. Bowen
Blumfield & Cohen
4 Embarcadero Center, Suite 1170
San Francisco, CA 94111

Norman H. Horton, Jr.
Messer, Caparello & Self, P.A.
215 S. Monroe Street, Suite 701
Tallahassee, Florida 32301-1876



Joseph A. McGlothlin