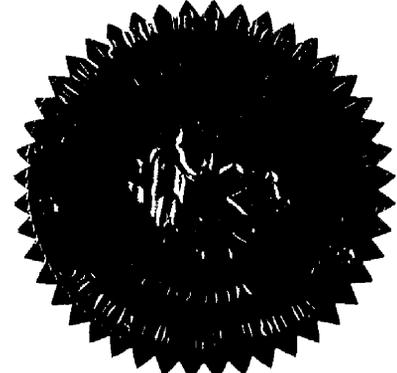


BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 000121-TP

In the Matter of:

INVESTIGATION INTO THE  
ESTABLISHMENT OF OPERATIONS  
SUPPORT SYSTEMS PERMANENT  
PERFORMANCE MEASURES FOR  
INCUMBENT LOCAL EXCHANGE  
TELECOMMUNICATIONS COMPANIES.



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VOLUME 1  
PAGES 1 THROUGH 191

PROCEEDINGS: HEARING

BEFORE: CHAIRMAN E. LEON JACOBS, JR.  
COMMISSIONER J. TERRY DEASON  
COMMISSIONER LILA A. JABER  
COMMISSIONER BRAULIO L. BAEZ  
COMMISSIONER MICHAEL A. PALECKI

DATE: Wednesday, April 25, 2001

TIME: Commenced at 9:30 a.m.

PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida

REPORTED BY: KORETTA E. STANFORD, RPR  
Official FPSC Reporter

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7 Telecommunications Association, Inc. (FCTA).

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11 JASON FUDGE and BETH KEATING, FPSC Division of Legal  
12 Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida  
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## INDEX

## WITNESSES

3	NAME:	PAGE NO.
4	PAUL W. STALLCUP	
5	Direct Examination by Mr. Fudge	44
6	Prefiled Direct Testimony Inserted	46
7	Cross Examination by Mr. McGlothlin	81
8	Cross Examination by Mr. Prescott	88
9	Cross Examination by Mr. Lackey	89
10	Redirect Examination by Mr. Fudge	114
11	KAREN KINARD	
12	Direct Examination by Ms. McNulty	116
13	Prefiled Direct Testimony Inserted	118
14	Rebuttal Testimony Inserted	160
15	Cross Examination by Mr. Carver	176
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

## EXHIBITS

	NUMBER:		ID.	ADMTD.
3	1	Staff's Official Recognition List	38	43
4	2	ALEC Response to Staff	39	43
5	3	BellSouth Response to Staff	39	43
6	4	BellSouth's Response to Staff (proprietary)	40	43
8	5	Deposition Transcript of Paul W. Stallcup	40	43
9	6	Deposition Transcript of David A. Coon	40	43
10	7	Deposition Transcript of Dr. William E. Taylor	41	43
12	8	Deposition Transcript of Dr. Edward Mulrow	41	43
13	9	Deposition Transcript of Karen Kinard	42	43
14	10	Deposition Transcript of Cheryl L. Bursh	42	43
15	11	Deposition Transcript of Dr. Robert Bell	43	43
16	12	Deposition Transcript of Dr. George Ford	43	43
17	13	Stallcup PWS-1	65	116
18	14	Kinard KK-1 through KK-5	172	
23	CERTIFICATE OF REPORTER			191

## P R O C E E D I N G S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
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CHAIRMAN JACOBS: We'll call this hearing to order.  
Counsel, read notice.

MR. FUDGE: Pursuant to a notice issued March 30th, 2001, this time and place was set aside for a formal hearing in docket number 000121-TP, investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.

CHAIRMAN JACOBS: We'll take appearances.

MR. CARVER: Phillip Carver on behalf of BellSouth, 675 West Peachtree Street, Atlanta, Georgia 30375.

MR. LACKEY: I'm Doug Lackey, also appearing and on behalf of BellSouth at the same address. And sitting in the back of the room, because she won't sit with me, is Ms. White, who is also appearing on behalf of BellSouth in this proceeding.

MR. GROSS: Michael Gross on behalf of the FCTA.

CHAIRMAN JACOBS: Yes, sir.

MR. PRESCOTT: Good morning, William Prescott on behalf of AT&T.

MR. McGLOTHLIN: Joe McGlothlin of the McWhirter Reeves law firm appearing for Z-Tel Communications, Inc.

MR. O'ROARK: D. O'Roark appearing on behalf of Worldcom.

MS. McNULTY: Donna McNulty appearing on behalf of Worldcom, Inc.

1 MS. BOONE: Catherine Boone appearing on behalf of  
2 Covad Communications.

3 MR. KERKORIAN: John Kerkorian on behalf of Mpower  
4 Communications.

5 MS. SUMMERLIN: Suzanne Summerlin on behalf of IDS  
6 Telecom.

7 MR. HORTON: Norman H. Horton, Jr. on behalf of espire  
8 Communications.

9 MS. RULE: And Marcia Rule on behalf of AT&T.

10 MR. FUDGE: Jason Fudge on behalf of the Commission  
11 Staff.

12 CHAIRMAN JACOBS: Does that take care of all the  
13 parties? Very well. Staff, are there any preliminary matters?

14 MR. FUDGE: Yes, Commissioner. Staff believes that the  
15 parties have agreed that the testimony and exhibits of certain  
16 witnesses may be entered into the record by stipulation without  
17 cross examination and, therefore, may wish to have those  
18 witnesses excused, if possible.

19 Staff believes the following witnesses may be  
20 stipulated: Witnesses Kramer and Gulas for IDS; and Witness  
21 Rubino for Z-Tel; and for espire, it's my understanding that  
22 Mr. Falvey is unable to attend, but Ms. Renee Terry will be  
23 taking his place.

24 COMMISSIONER DEASON: Could you repeat that, please?

25 MR. FUDGE: The whole list?

1 COMMISSIONER DEASON: Yes, the whole list.

2 MR. FUDGE: Witnesses Kramer and Gulas, on behalf of  
3 IDS, they wish to be excused from the hearing; and Witness Rubino  
4 on behalf of Z-Tel has been stipulated; and Witness Falvey for  
5 espire was unable to attend, and Ms. Terry will take his place.

6 COMMISSIONER JABER: I'm sorry, where's the espire?

7 MR. HORTON: Mr. Chairman, if I might. Mr. Falvey had  
8 a -- I'm over here.

9 CHAIRMAN JACOBS: Oh, how are you?

10 MR. HORTON: Mr. Falvey had a conflict, so we will  
11 substitute Ms. Terry for Mr. Falvey and she will adopt his  
12 testimony when she comes. She will not be here until this  
13 afternoon, which I don't think is going to be a problem.

14 CHAIRMAN JACOBS: Parties have agreed that we can have  
15 her taken out of order, if need be?

16 MR. HORTON: I don't know that we'll need to take her  
17 out of order, but just to let you know that she's having to  
18 travel today.

19 CHAIRMAN JACOBS: Very well. And I assume that all  
20 parties are in agreement as to stipulation of Mr. Kramer and  
21 Mr. Gulas and Mr. Rubino. How would you like to take care of  
22 those testimonies? Should you do them in order, just stipulate  
23 them when they appear in the order of the sequence?

24 MR. FUDGE: Yes, Commissioner, we can have them  
25 entered into the record as they are read whenever it's their time

1 to appear.

2 CHAIRMAN JACOBS: Very well. Are there any other  
3 preliminary matters?

4 MR. FUDGE: Yes, Commissioner. I believe, IDS would  
5 like to be excused from the hearing.

6 MS. SUMMERLIN: I'm over here. Suzanne Summerlin.  
7 We're basically supporting the ALEC coalition, and I would like  
8 to be excused from being here for the three days.

9 CHAIRMAN JACOBS: Very well.

10 MS. SUMMERLIN: Okay. Thank you.

11 CHAIRMAN JACOBS: Let the record reflect that you were  
12 here, and you are excused.

13 MS. SUMMERLIN: Thank you.

14 MR. FUDGE: Commissioner, there is also a number of  
15 stipulated exhibits, which can be marked for the record at this  
16 time. The parties have been provided the Official Recognition  
17 List and the list of stipulated exhibits, and the exhibits are  
18 attached. I believe, that an amendment to the Official  
19 Recognition List has been provided to all the parties by Worldcom  
20 and it just adds a Pennsylvania Commission order and a federal  
21 case.

22 CHAIRMAN JACOBS: Now, unless I'm missing it, Staff,  
23 those -- yours aren't listed on the prehearing order, are they?  
24 The stipulated Staff exhibits aren't on the prehearing order?

25 MR. FUDGE: No, sir. There's a big packet.

1 CHAIRMAN JACOBS: Got it.

2 Why don't we take care of those at the time that we  
3 begin to -- just before we bring the first witness to the stand.  
4 We can walk through all those.

5 MR. FUDGE: Okay.

6 CHAIRMAN JACOBS: As I understand it, there has been an  
7 agreement for opening statements?

8 MR. FUDGE: Commissioner, there is one more stipulated  
9 item we can probably take up now.

10 CHAIRMAN JACOBS: Go ahead.

11 MR. FUDGE: The parties have agreed to stipulate to the  
12 following issues: Issue A, Issue 7 --

13 CHAIRMAN JACOBS: Just a moment. Let's get there.  
14 Okay. So, Issue A, there is a proposed stipulation?

15 MR. FUDGE: Yes, Commissioner.

16 CHAIRMAN JACOBS: Very well. What's the next one?

17 MR. FUDGE: Issue 7.

18 CHAIRMAN JACOBS: Very well.

19 MR. FUDGE: Issue 14-A and B.

20 CHAIRMAN JACOBS: Very well.

21 MR. FUDGE: And Issue 16.

22 CHAIRMAN JACOBS: Very well. Is that agreement in  
23 writing as of yet?

24 MR. FUDGE: No, sir.

25 CHAIRMAN JACOBS: Okay. Commissioners, I assume, if

1 you want to look at that before we close out so you may have any  
2 questions on that, so if we can get a copy of that proposed  
3 stipulation by the end of the case, would that --

4 MR. FUDGE: Sure.

5 CHAIRMAN JACOBS: Very well. Does that take care of  
6 all there is?

7 MR. FUDGE: That's all the preliminary matters that  
8 Staff is aware of.

9 CHAIRMAN JACOBS: Great. What I'd like to do, then, is  
10 move to opening statements. As I understand it, there is an  
11 agreement for 20 minutes per side with BellSouth being on one  
12 side and the ALECs comprising the other side; is that the  
13 agreement? Very well. BellSouth, would you be going first?

14 MR. LACKEY: I don't want to go first, Mr. Chairman,  
15 but I suspect they're going to insist, so I will.

16 CHAIRMAN JACOBS: You may proceed.

17 MR. LACKEY: Thank you, sir.

18 Mr. Chairman, Commissioners, my name is Doug Lackey,  
19 and I'm one of the attorneys representing BellSouth in this  
20 proceeding. My opening statement is going to be a little long,  
21 less than the allotted 20 minutes. Though, I've asked Mr. Carver  
22 to keep time on me, and I assure you I will not run over, but I  
23 think it's important to give you an overview of where we're going  
24 with this case.

25 This case has two purposes. The first is to determine

1 the appropriate service quality measurements that the Commission  
2 should adopt that can subsequently be used to determine whether  
3 BellSouth is providing nondiscriminatory access to the ALECs.

4 The second purpose is to adopt a penalty plan which can be used  
5 once BellSouth gets interLATA relief in Florida to prevent  
6 BellSouth from backsliding.

7 I'm not going to try to tell you it's not a complicated  
8 case. We have 17 witnesses. We've just stipulated three, still  
9 leaves 14. Of the remaining 14, three or, depending on how you  
10 count it, four of them are statisticians, and I assure you their  
11 testimony is going to try your patience. We have five  
12 substantive witnesses to address the policy issues; Mr. Stallcup  
13 for the Staff, Ms. Cox and Mr. Coon for BellSouth, Ms. Kinard,  
14 and Ms. Bursh for the ALECs.

15 I think, we're going to spend a lot of time with those  
16 witnesses, because they're the ones that discuss the meat of the  
17 plans. We also have three remaining, what I call anecdotal  
18 evidence witnesses, folks who are going to get up and tell you  
19 what's wrong. Quite frankly, I'd offer to stipulate all those  
20 witnesses, because the purpose here is to decide what kind of a  
21 plan you should adopt, not whether we need one or not.

22 Now, again, it's going to be a long case. I have  
23 instructed my witnesses, as per the prehearing order, to keep  
24 their summaries to less than five minutes. I've instructed them  
25 to answer their questions yes or no when that's possible. And if

1 we all do that, we ought to be able to move through this.  
2 Unfortunately, I suspect we're not going to get perfection on  
3 that. We're going to get what we're here to talk about and  
4 that's parity; won't always happen, but it'll happen most of the  
5 time.

6           Let me talk to you a little bit about the plans that  
7 we're going to be presenting evidence on. There are actually  
8 three plans. One is the one that your Staff has advanced which  
9 they have characterized is a strawman. Now, the ALECs don't like  
10 the Staff's plan, so I suspect they're going to take every  
11 opportunity to point out that Mr. Stallcup's testimony contains  
12 just a recommendation, a suggestion, not something that the Staff  
13 is wedded to.

14           We're going to point out in the evidence in the cross  
15 examination that the Staff's plan is one that the Staff  
16 represents as being designed to promote competition in Florida.  
17 We're also going to point out that the Staff's plan is one that  
18 is modeled on the plan that was adopted in Georgia after a  
19 proceeding just like the one we're going through here. The  
20 evidence will also demonstrate that that plan was the product of  
21 several years of work, not something that was simply sprung  
22 full-blown from a corporate mind.

23           We're also going to present our plan. And I call it a  
24 plan, but it's really two plans. The first is the service  
25 quality plan, the second is the enforcement penalty plan.

1           The service quality plan is broken down like this:  
2 There are 11 major categories of measures that cover every aspect  
3 of the provision of telephone service. There is a category for  
4 pre-ordering, there is a category for ordering, there's a  
5 category for provisioning, there's a category for maintenance and  
6 repair, and there's a category for billing and so on.

7           Each of these categories is then further broken down  
8 into measurements and reports, and there are 71 measures and  
9 reports. For example, one of the measures in the ordering piece  
10 of the case, if I can keep it straight, is the acknowledgment  
11 message timeliness and acknowledgment message completeness.

12           These measures measure the time from when a local  
13 service request is sent to BellSouth to the point that BellSouth  
14 acknowledges it. Doesn't say it's right, doesn't say it's wrong,  
15 doesn't say it's complete; they sent it, we got it, that's all it  
16 measures. That was sort of a product of what happened in New  
17 York after they got interLATA relief and lost a bunch of orders.

18           Anyway, there's 71 of those measures and reports that  
19 cover, again, every aspect of the telecommunications process. We  
20 don't stop there, though. What we do with those 71 measures and  
21 reports is we break them down further. And what we do is there's  
22 a term for disaggregation. My word processor keeps telling me  
23 there's no such word, but that's the word we all use and you're  
24 going to hear a lot, and let me give you an example.

25           One of the measures that we have in our 71 is order

1 completion intervals. We measure how long it takes us from the  
2 time a service order is entered to the time that the service  
3 order is worked, and there's an order completion interval.

4           We have, under that measurement, 20 products; resale  
5 residence, resale business, 20 of them. So, what you end up with  
6 is you end up with 20 submeasures for products under that  
7 category.

8           And when you're done breaking them all down you end up  
9 with 1,200 categories. That's how many measurements we have in  
10 our plan, 1,200 of them. And then there are an accompanying 600  
11 measurements for BellSouth's analogs and benchmarks for the rest,  
12 because you have to compare those measures against what we do.  
13 Where we provide the same service there's an analog where we use  
14 a benchmark, and you all know what a benchmark is. It's like  
15 you're repairing 95% of all out of services within 24 hours.  
16 That's a benchmark.

17           Now, is there anything magic about our 1,200 measures?  
18 Well, no, the truth of the matter is there isn't. They've been  
19 developed over several years working with Louisiana, working with  
20 Georgia, working with the Commission and this Staff, working with  
21 the FCC, working with the Department of Justice, and working with  
22 ALECs, but there's nothing magic about it.

23           There is an advantage to it, though, and that is it's  
24 implemental, it's doable. At the same time we've been developing  
25 these measurements, we've also been developing a database and a

1 process for managing this data. It's called the performance  
2 measurement analysis platform, PMAP, and you're going to hear a  
3 lot about that. What PMAP does is PMAP allows us to generate the  
4 reports that people are going to need to look at to see how we're  
5 performing. In short, our SQM plan can be implemented, and it  
6 can be implemented now.

7           We also have a penalty plan. And, basically, what  
8 we've done is we have grouped together the most meaningful  
9 measures. And what we do is when we don't provide parity, when  
10 we don't provide nondiscriminatory access, we pay penalties on  
11 those measurements. Our penalties range from \$20 for some of  
12 them all the way up to \$15,000 for others.

13           Importantly, our penalty plan is scalable. We pay  
14 penalties on transactions, not on measures. If we miss one  
15 transaction, we pay one penalty. If we miss 100 transactions  
16 under the same measurement, we pay 100 penalties. Our plan  
17 escalates. If we miss a penalty one month and then miss it the  
18 next month, it escalates.

19           We pay the penalties that I've just been describing to  
20 the ALECs. When we mess up an order for an ALEC or we have a  
21 failure for an ALEC, we write a check to the ALEC. We have a  
22 second tier in our penalty plan called Tier 2. That's when we do  
23 something that affects the ALEC industry. We write a check to  
24 the state of Florida for that, so we have a two-tiered penalty  
25 plan.

1           We'll go into this in a lot more detail, but basically  
2 we think our SQM and our penalty plan are more than sufficient to  
3 allow you all to determine whether we are providing  
4 nondiscriminatory service and to implement a plan that will keep  
5 us from backsliding when -- and I say when, not if -- when we get  
6 interLATA relief in the state of Florida.

7           Now, there is one more plan, the ALEC plan. And I  
8 assure you, I have not left the best for last. I told you that  
9 our plan had 1,200 metrics, submeasures in it. Nobody knows how  
10 many submeasures the ALEC plan has. Ms. Bursh, I expect to  
11 testify, thinks it has 10,000. Ms. Kinard's going to say she  
12 doesn't know. Mr. Coon did a calculation and says that he thinks  
13 there must be about 75,000 measures. In fact, there may be  
14 hundreds of thousands of measures, we don't know.

15           Now, should this be a concern? Well, the evidence is  
16 going to show that there's no system for tracking these. There's  
17 no database that collects this information. There's no computer  
18 system that generates reports based on these measurements. How  
19 many Staff people is it going to take to monitor 75,000, if  
20 that's how many there are, measures? How many hearings are we  
21 going to have to have over disputes over the 75,000 measures?  
22 Who knows?

23           Now, how did they get 75,000 measures, or whatever it  
24 happens to be, when we've got 1,200? Well, let me give you an  
25 illustration of how that happened. The ALECs have a measure

1 called mean held order interval and distribution interval. It's  
2 in Ms. Kinard's exhibits. What they've done is they've broken  
3 that measurement down into 41 products across 13 geographical  
4 areas in the state, across three volume categories, one to five  
5 lines, six to 50, whatever the numbers happen to be, and across  
6 three kinds of dispatches; dispatch in, dispatch out, no  
7 dispatch, whatever those mean.

8           When you multiply those out you end up with 4,800  
9 possibilities. There are 4,800 combinations that an order can  
10 fit into. It's real easy. I'm not sure I can do the math right,  
11 but if you have a hundred of those categories or a hundred of  
12 those measurements and multiply them times 4,800, I think, you  
13 get a real big number. Maybe a half of -- yeah, 480,000  
14 measurements. So, that's how it happens.

15           Now, do they have a penalty plan? You bet they have a  
16 penalty plan that goes with it. Their penalty plan assesses a  
17 penalty against every single measurement, every single  
18 measurement. If there are 75,000 of them, there are 75,000  
19 opportunities. I don't know how their measurement plan works  
20 exactly, but I looked at Ms. Bursh's example in her testimony.  
21 They have three levels: Basic, intermediate, and severe.

22           In her example the basic failure was worth three grand,  
23 the intermediate failure was worth slightly over eight grand, and  
24 the severe failure, \$25,000; write a check for \$25,000. Now, I'm  
25 not going to tell you how the math works, because I can't. But I

1 can give you an example of how, I think, it works. Remember, I  
2 told you that some of these measurements had benchmarks instead  
3 of analogs. The ALEC plan doesn't have a benchmark that falls  
4 below 95%. That is, we have to have 95% on time, on target,  
5 correct activity to avoid a penalty. If we fall to 90%, we've  
6 incurred a severe penalty.

7           Now, let me give you an example. One of the  
8 measurements that has a benchmark is the electronic loop makeup.  
9 And what that is, is a CLEC who wants to order an xDSL line wants  
10 to know what the loop looks like; is it copper, does it have load  
11 coils on it, what have you, so they can do an electronic inquiry,  
12 they can dip into a database and get a response. The ALECs want  
13 95% of those responses -- now, remember, we're talking about  
14 computers talking to each other here. They want 95% of it in  
15 less than a minute.

16           So, what that means is if we provide 90% in less than a  
17 minute and the other 10% we provide in 70 seconds each, we write  
18 a check for \$25,000. Their plan's not scalable. The evidence is  
19 going to show it's not related to the injury. It's not an  
20 appropriate plan.

21           Moreover, their plan is guaranteed to generate  
22 failures. The evidence is going to show, for example, that if  
23 they had a thousand xDSL orders, that they basically break those  
24 thousand xDSL orders, assuming they were evenly distributed, down  
25 into about 330 categories, which gives you about three orders per

1 category, assuming an even distribution. The point is when you  
2 got thousands and thousands of categories, you're going to get  
3 very small numbers in each of the categories.

4 Now, I said earlier when I was talking about yes and no  
5 answers, that all we're obligated to do is give parity, not  
6 perfection. And we're not going to be perfect. We're not  
7 perfect in our own operations. We're going to have some misses.  
8 You take a thousand orders, you're going to miss some of them.

9 So, let's just assume we miss 5% of the thousand  
10 orders. Well, when you start breaking those thousand orders down  
11 over 350 categories, you're going to have some failures that are  
12 in some categories; it's unavoidable, and we're going to pay a  
13 penalty. Their plan is guaranteed to generate penalties.  
14 They're going to turn penalties into a line of business.

15 Now, the purpose here is to come up with reasonable  
16 plans. The purpose is not to cripple BellSouth. We've put a 36%  
17 net revenue cap on our plan. If we have an utter and complete  
18 failure, we'll pay up to 36% of our net income out in penalties  
19 to the ALECs and to the state of Florida per year.

20 The point is not to cripple us. The point is not to  
21 create a transfer mechanism where we send money to the ALECs.  
22 The purpose of this proceeding is to come up with reasonable  
23 measures to make sure that we are providing parity. Our plan  
24 does that. The Staff's plan does it too, quite frankly. We're  
25 not completely enamored to the Staff plan. We've added some

1 measures. We've dropped some things that were approved in  
2 Georgia that we didn't think were appropriate, but the Staff's  
3 plan is also designed to do it. The ALEC plan isn't designed to  
4 do it. The evidence is going to show it can't be administered,  
5 it can't be implemented, it can't be applied. It's nothing but a  
6 wealth transfer mechanism and a mechanism to keep us out of the  
7 interLATA business.

8 Thank you for your attention.

9 CHAIRMAN JACOBS: Thank you, Mr. Lackey.

10 Whose up for the ALECs? Mr. O'Roark.

11 MR. O'ROARK: Mr. Chairman, I'm D. O'Roark representing  
12 Worldcom. ALECs are going to present their opening statement in  
13 three segments. I'm going to provide a brief overview,  
14 Mr. McGlothlin is then going to talk about statistics, and  
15 Mr. Prescott is going to talk about remedies.

16 So, I will start by noting that most of the issues in  
17 this case deal with one of five broad questions. The first broad  
18 question is what should be measured? Or, in other words, what  
19 metrics should be included in this plan that we're coming up  
20 with?

21 Mr. Lackey mentioned that the BellSouth SQM has 71  
22 metrics. ALECs are proposing about 20 additional metrics. Those  
23 additional metrics are designed to capture data in problem areas  
24 that ALECs have discovered as they have developed commercial  
25 experience. So that's the 71, plus however many additional

1 metrics is what is concerned with that first question.

2           The second question is once we have decided what we're  
3 going to measure, how are we going to measure it? A  
4 poorly-defined metric is going to yield misleading results, so we  
5 have to look at things, for example, on an interval metric,  
6 exactly when does the clock start, exactly when does it stop,  
7 that kind of detail; what transaction should be included in the  
8 metric, what transactions should be excluded?

9           And then, we get to this question of disaggregation  
10 that Mr. Lackey discussed in his opening. As you know,  
11 disaggregation involves breaking down performance data into  
12 appropriate categories; for example, BellSouth has different  
13 provisioning intervals for different kinds of loops.

14           If you have a basic, what's known as an SL1 loop,  
15 you're going to have one interval. If you have a high-capacity  
16 loop, you're going to have another interval. If you do not  
17 disaggregate the data for those two kinds of loops and you lump  
18 it together, you're going to produce a result that's not going to  
19 be very meaningful. What you need to do is to provide the data  
20 separately for each one so that you can see how BellSouth  
21 provisions the simple loops and the higher-capacity loops.

22           Now, one concern that BellSouth has expressed, and  
23 Mr. Lackey expressed it just now, is a concern that we're going  
24 to end up with too many measurement points. A good deal of the  
25 dispute here has to do with what's known as geographic

1 deaveraging. I believe, Mr. Lackey said that there were 13  
2 geographic areas. So, the question is should we do this  
3 statewide or should we do it in 13 different areas?

4           Obviously, if you do it in 13 different areas, that  
5 multiplies the number of performance measurement points by 13.  
6 If you take that out, then I think we're probably at roughly the  
7 same order of magnitude. Our position is that BellSouth's  
8 computers are capable of breaking down the data by geographic  
9 area and that the Commission ought to know whether the  
10 performance that BellSouth is providing in Miami is the same as  
11 it's providing in Jacksonville.

12           And quite frankly if, after reviewing that data over  
13 some period, we see that it's really the same statewide, then it  
14 might well be appropriate just to look at the statewide data, but  
15 you don't know until you look at it in the first place.

16           The next broad question, once we decided what we're  
17 going to measure, how we're going to measure it, the next  
18 question is how are we going to evaluate the performance data  
19 that these metrics generate? And the answer is it depends. It  
20 depends whether BellSouth has a retail analog or not. And a  
21 retail analog is simply a BellSouth process that it uses to  
22 provide service to its own retail customers.

23           If BellSouth has a similar process for its own  
24 customers, as what it provides to us, then what we end up with  
25 when we get the performance data from a metric is two sets of

1 performance data; one for ALECs and one for BellSouth. And  
2 actually, the ALEC data, then, you can subdivide further into  
3 each ALEC, but basically two different sets of data that have to  
4 be compared.

5 The only way to do that is through some statistical  
6 process, and that's what Mr. McGlothlin is going to talk about in  
7 just a minute. That's very important, because if you don't use  
8 the right statistical process, you can very well end up with a  
9 comparison that makes it appear as if BellSouth is providing  
10 parity when it really isn't.

11 The other possibility is that there is no retail  
12 analog. In that case, the performance standard that we use is a  
13 benchmark. For example, if it's a provisioning interval, then  
14 the benchmark might be, for example, that BellSouth will  
15 provision a particular service or product on average within three  
16 days. Once we get the performance data, either it averages to  
17 three days or it doesn't.

18 Once we have evaluated the data, we get to the next  
19 major question that you've got to consider, and that is how  
20 should subpar performance be remedied? And that is the subject  
21 that Mr. Prescott is going to deal with in a few moments.

22 And then, finally, the last broad question in this case  
23 is how should the performance data be verified? The performance  
24 data that we're talking about is generated by BellSouth's  
25 systems, so we've got to be able to audit it somehow to make sure

1 that what we're looking at is valid. In a brief nutshell, that's  
2 an overview of the case. Now, let me turn it over to  
3 Mr. McGlothlin to talk about statistics.

4 MR. MCGLOTHLIN: Good morning, Commissioners. I'm  
5 Joe McGlothlin. I represent Z-Tel Communications in this case.  
6 I hope you'll bear with my lack of voice this morning. I think,  
7 I'll have enough voice to get through the six or seven minutes  
8 allotted to me, but not much more, which may be a good thing.

9 I'm going to discuss, at a purely conceptual level, the  
10 major considerations and points that, I think, the Commissioners  
11 should weigh as they hear the evidence on the choice of the  
12 appropriate statistical test.

13 And since my subject is statistics, I'll start with  
14 one. I can state with a high level of confidence that of all the  
15 persons in the general population, fully 84% are put off by  
16 statistical tests. But more seriously, I think, the choice of  
17 the statistical test is the most important decision you're going  
18 to make in this case, as worthy of your efforts, because if the  
19 chosen statistical test fails to detect discrimination properly,  
20 then all the other work that you're going to hear about today  
21 will have been for not.

22 You will see and hear, throughout the testimony of  
23 various witnesses in this case, references to the standard 1996  
24 Act. The witnesses agree that the 1996 Act requires BellSouth to  
25 provide a quality of service to ALECs that is equal to the

1 quality of service that it provides to BellSouth's retail  
2 customers.

3 Now, this standard is articulated in several different  
4 ways. There is equality of levels of service, there is parity of  
5 service, there is nondiscriminatory service. They all mean no  
6 difference in the quality received by the ALECs and the quality  
7 received by BellSouth's retail customers.

8 And this concept, the standard of the '96 Act, carries  
9 over to the statistical test. You will hear references to the,  
10 quote, null hypothesis. The null hypothesis is the proposition  
11 that there is zero difference between the average or the mean  
12 quality of the service received by ALECs and the corresponding  
13 average or mean quality of service that BellSouth provides to its  
14 retail customers.

15 The statistician will ask do we accept or reject the  
16 null hypothesis? That's simply another way of saying are the  
17 qualities equal? And the purpose of the statistical test is to  
18 answer that question. That's why the experts call it a means  
19 difference test. It is applied to determine whether the null  
20 hypothesis; that is, equality, is true.

21 It's important that you keep this fundamental purpose  
22 of the statistical test in mind as you hear the witnesses duel  
23 over nuances of methodology that have a significant impact on the  
24 ability of the test to do just that.

25 A lot of the nuances, to which I'll refer, they arise

1 as a result of the fact that samples of data, instead of the  
2 entire universe of data, are measured within this plan. Samples  
3 may or may not reflect the universe of data accurately. Samples  
4 are a potential source of error; therefore, it's appropriate to  
5 guard against the possibility that a perceived or measured  
6 difference in means is a result of random sampling error as  
7 opposed to the existence of true discrimination.

8           For this purpose and for this purpose alone, the  
9 analysts will introduce a construct called delta. Delta is an  
10 assumption of an amount of discrimination that the test regards  
11 as acceptable, put quotations around acceptable, for the limited  
12 purpose of dealing with random sampling error. And think about  
13 it, an assumption of inequality is foreign to a test to detect  
14 whether equality is being denied.

15           By way of example, if we were testing whether women  
16 receive the same pay as men for doing the same work, is it likely  
17 that we'd start out by constructing a differential, say, \$5,000  
18 and assuming that if it's that close, it doesn't matter. Yet,  
19 when you hear the word delta in this case, usually you also hear  
20 words like material or materiality close behind.

21           What you should bear in mind, whenever anybody  
22 mentions delta or material, is that this means we have departed  
23 from the concept of zero difference that is embodied in the  
24 obligations that the '96 Act places on BellSouth.

25           Intuition alone, then, should suggest to you that you

1 should be wary of the role that delta plays in the choice and  
2 design of a statistical test. Further, as Dr. Ford will explain,  
3 the greater the increment of discrimination that is assumed to  
4 be, quote, acceptable, the less able the resulting statistical  
5 test will be to detect a difference in the means of the ALECs  
6 service it received and the retail customer service. Further,  
7 this effect, this impact on the ability of the test to detect  
8 difference in means, is exacerbated severely as sample size  
9 increases.

10           So, you have two things going on in a statistical test,  
11 both of which have an impact on the sensitivity of the test to  
12 true difference in means. How do the witnesses respond to these  
13 mathematical relationships and this phenomenon of the impact on  
14 the ability to detect discrimination?

15           Well, BellSouth's witness, Dr. Mulrow, assumes a delta  
16 of one which, as the witnesses will explain, implies a difference  
17 between the service received by ALECs and the service received by  
18 BellSouth's retail customers equal to a full standard deviation  
19 of the ILECs' service.

20           Further, Dr. Mulrow suggests that no adjustment be made  
21 to the results of the test as sample size increases, even if the  
22 combination of the delta of one and larger sample size takes the  
23 significance level of the test off the map and renders it very,  
24 very biased against the ability to detect a discrimination.

25           It's more important to Dr. Mulrow, you will hear, that

1 the mechanism he adopts to control sampling error achieve full  
2 symmetry. And after you think it through, I think, you will  
3 conclude that the witness is subordinating the true intent of the  
4 test to the secondary goal of equalizing the possibility of areas  
5 going one way or the other. And, I think, third about it,  
6 there's something of a provers irony in the fault that one would  
7 take the standard of equality and take a tool designed to measure  
8 whether equality is being afforded and, under the guise of  
9 improving the tool, render it really less effective to do its  
10 intended job.

11 On the other hand, the ALECs' witnesses treat delta as  
12 a necessary evil that should be contained. AT&T's witness,  
13 Dr. Bell, advocates a relatively smaller value of delta, .25.  
14 Dr. Ford of Z-Tel takes his refinement an important step farther.  
15 He proposes varying the value of delta as a function of sample  
16 size in a way that is designed to preserve the ability of the  
17 test and measure differences between means.

18 As you ponder the competing arguments, I ask you to  
19 consider which of the proposals adhere's more closely to the  
20 standard of the '96 Act, which is zero difference. Remember that  
21 material discrimination is a far different concept than equality  
22 of service.

23 Secondly, bear in mind, this is something else that you  
24 will hear the witness agree to, delta is an assumption. An  
25 analyst making the assumption does not know whether the

1 particular assumption is material or not. Relating back to the  
2 earlier illustration in the test is determined whether equality  
3 of pay is being given, we could have made that differential  
4 \$5,000 or \$10,000 or 20 and not know whether anyone would regard  
5 that as material or not.

6           And thirdly, bear in mind that we are here designing a  
7 performance assessment test precisely because BellSouth has no  
8 incentive to provide parity of service. That being the case,  
9 recognize that the same economic factors that bring us here today  
10 permeate the entire package that comprises the performance  
11 assessment plan. Is it likely that BellSouth has any greater  
12 incentive to propose a statistical test that will successfully  
13 detect discrimination?

14           Thank you.

15           MR. PRESCOTT: Thank you.

16           Good morning, Commissioners. I am here to give you a  
17 brief overview of the ALEC evidence regarding its remedy plan and  
18 what the evidence will be regarding our problems with the  
19 proposal made by BellSouth.

20           As you know, the Telecommunications Act of 1996  
21 requires BellSouth to provide parity service to ALECs,  
22 irrespective of whether it makes an application for 271 relief or  
23 not. We believe the objective of a remedy plan ought to be to  
24 provide BellSouth with the incentive necessary to provide that  
25 parity service. To that end, we have designed a plan that takes

1 into consideration several principles identified by the FCC.

2           You will hear Ms. Bursh and Ms. Kinard, in some  
3 respects, speaking about the performance measures in the remedy  
4 plan that we have composed. Ms. Kinard will probably speak more  
5 on the measures, the individual measures, and why we need them,  
6 but they are an integral part of any remedy plan.

7           In order to ensure that we are getting parity service  
8 from BellSouth, we must be able to identify the level of  
9 performance that we are receiving; and, therefore, the plan  
10 measures cover every aspect that the CLEC coalition's business is  
11 where we would have to rely on BellSouth to perform for our  
12 customers.

13           The measures, as Mr. O'Roark stated, are disaggregated,  
14 and that the reason for that disaggregation is to get to  
15 like-to-like comparisons of product so that we are ensuring that  
16 what we are comparing is accurate.

17           Like BellSouth's plan and the plan proposed or the  
18 proposal made by the Staff, the ALEC plan has two tiers; has Tier  
19 1, which measures the quality of support delivered by BellSouth  
20 to the individual ALECs; and Tier 2, which measures the quality  
21 and support delivered by BellSouth to the ALEC industry in the  
22 aggregate.

23           Like the other plans, BellSouth's performance is  
24 measured using retail analogs and benchmarks. I think, everybody  
25 agrees on those concepts. It's a matter of coming up with

1 agreement on the particular benchmarks and business rules and  
2 that sort of thing, and that will be discussed more by  
3 Ms. Kinard.

4           There is a different statistical methodology which we  
5 use in our plan. We use a modified z statistic where BellSouth  
6 used a truncated z. And Dr. Bell, who is our statistician, will  
7 go into more detail regarding the modified z statistic when he  
8 testifies.

9           With regard to the remedies, as I said, they're paid  
10 for Tier 1 violations to the ALEC and for Tier 2 violations to  
11 the state. The remedies are applied at a submeasured level.  
12 However, the payments are only made if a particular ALEC's  
13 business touches a submeasure where there is a violation. So,  
14 there is no guarantee that all of the submeasures are going to be  
15 touched by any ALEC or that BellSouth will pay any money on every  
16 submeasure.

17           With respect to the contention raised by Mr. Coon in  
18 his testimony and Mr. Lackey this morning that we are attempting  
19 to shift revenue, I think, the evidence will show that the  
20 ultimate control, whether BellSouth pays any remedies at all, is  
21 in BellSouth's hands, and if it provides parity service as  
22 required that will be -- excuse me, briefly distracted -- there  
23 will be no remedies paid by BellSouth at all.

24           Also, with regard to BellSouth's liability, the ALEC  
25 plan does take into consideration the amount of liability that

1 will be at risk for BellSouth, and there is a procedural cap in  
2 the ALEC plan and also in the Staff's proposal that we cap  
3 BellSouth's -- well, we put a procedural cap on BellSouth's  
4 liability at 39%.

5           At the point where BellSouth reaches the procedural  
6 cap, they would then have the ability to come in and address  
7 their concerns to the Commission and explain and provide any  
8 basis for not paying additional remedies beyond a procedural cap.

9           The money that would be paid during the interim of this  
10 review process would be paid into a state fund and would be  
11 distributed as the Commission determines, should the Commission  
12 determine that it should be paid.

13           We think, although Mr. Coon in his testimony and  
14 Mr. Taylor in his testimony for BellSouth take issue with the  
15 amounts of the remedies determined to be placed in the ALEC plan,  
16 we feel, as Ms. Bursh testified, that the amounts arrived at are  
17 reasonable amounts to incent BellSouth to perform.

18           As you know, there is no magic formula for setting  
19 remedies or setting fines that would determine unlawful conduct.  
20 The state doesn't have a magic formula when it sets fines for  
21 motor vehicle violations. They simply determine what they think  
22 will be enough to deter people from acting improperly and set  
23 that as the amount. It may be that the amounts the ALECs have  
24 come up with are not high enough to incent BellSouth, but they do  
25 represent what we think is reasonable in this plan and to

1 motivate BellSouth to perform legally under the Act.

2           On the other hand, we have a lot of problems with the  
3 plan proposed by BellSouth. There are several areas where it's  
4 deficient; the first being that it does not include an adequate  
5 set of measures, and the measures that it does include are not  
6 properly disaggregated to get to like-to-like comparisons. What  
7 BellSouth has done in its plan is to aggregate products that are  
8 not alike into one group, and that will result in skewing the  
9 performance results and not giving a true picture of the service  
10 that they're providing to ALECs.

11           We also disagree with their methodology for calculating  
12 remedies. The exhibit that's being placed is an exhibit that was  
13 taken from DA-6 -- DAC-6, which is Mr. Coon's testimony filed on  
14 Direct. As you will see, there are several columns there, but  
15 for the purposes of this discussion, the three that are in color  
16 are the ones that we need to focus on.

17           The 50,000 in purple represents the number of BellSouth  
18 transactions for any given month for this particular measure.  
19 The NC, which is in the green, represents the number of ALEC  
20 transactions for the same measure in the month. The next column  
21 represents the pink with 96, represents the number of  
22 transactions, ALEC transactions, that BellSouth failed to provide  
23 parity service on. And so, you see that's 96 transactions. But  
24 using BellSouth's calculation, they would only pay on 29 of those  
25 transactions.

1           So, contrary to what Mr. Lackey would have you believe  
2 this morning, they don't pay on every transaction. There are  
3 some 60, 70 odd transactions that would go unaccounted for, even  
4 though BellSouth violated on those transactions.

5           CHAIRMAN JACOBS: And what you're saying is that  
6 happens because of the aggregation that occurs within this?

7           MR. PRESCOTT: It happens because of the aggregation,  
8 also because of the calculation that they do. And that would be  
9 better explained by Dr. Bell in his testimony, but that's one of  
10 the major problems we have with the plan that's proposed by  
11 BellSouth.

12           The other, as Mr. McGlothlin alluded to, is the choice  
13 of delta and the effect delta has on materiality. This is a  
14 chart that was taken from the testimony of Dr. Bell. It's in  
15 table one in his Direct testimony on Page 13. And it  
16 demonstrates the impact that the delta value has on materiality.

17           In this proceeding, the ALECs have proposed .25 as the  
18 delta value for both Tier 1 and Tier 2 measures. BellSouth has  
19 proposed .50 for Tier 2 measures and one for Tier 1 measures.

20           In this chart, the first column represents the  
21 percentage of BellSouth customers receiving bad service, and that  
22 would be 5%. And if you look in the middle of the column, 5%.  
23 And if you go across for a delta value of .25, a materiality  
24 determination would be made when 11.8% of the ALEC customers are  
25 receiving bad service and so forth across. When you get to one

1 where delta, the delta proposed by BellSouth, it would have to be  
2 44% of ALEC customers receiving bad service before materiality is  
3 determined.

4 And so, we think that's too long an interval to allow  
5 for discrimination to occur before conduct is corrected. And  
6 again, Dr. Bell would be better able to discuss that in detail,  
7 if you have any questions about it during his testimony.

8 CHAIRMAN JACOBS: Getting close to the end of time.

9 MR. PRESCOTT: Excuse me?

10 CHAIRMAN JACOBS: We're getting close to the end of  
11 your time.

12 MR. PRESCOTT: Okay. I just have a few more points.

13 The other problem, major problem, we have is with Tier  
14 2, the way BellSouth's plan enforces remedies under Tier 2.  
15 Under the BellSouth plan, it would take three consecutive months  
16 of poor performance for the ALECs before BellSouth is required to  
17 pay any remedies under Tier 2.

18 Therefore, if BellSouth performed badly in January,  
19 February and then performed appropriately in March, it would pay  
20 no remedies for its poor performance in January and February.  
21 And this allows BellSouth, basically, to provide the ALEC  
22 community with poor performance eight months out of the year, as  
23 long as it provides parity service for four months so it doesn't  
24 have three consecutive months of poor performance, so it doesn't  
25 ensure that any remedies will ever be paid under Tier 2 of its

1 plan.

2           And to the extent that BellSouth's plan does not  
3 include all the measures in both Tier 1 and Tier 2, if there are  
4 no remedies paid at Tier 2, it could possibly be no remedies paid  
5 in Tier 1. And so, there's no remedies paid at all for these  
6 transactions that are in violation. We think that's  
7 inappropriate.

8           With regard to the absolute cap proposed by BellSouth,  
9 we think that that is simply a mechanism that will allow them to,  
10 again, provide poor performance without a remedy. If BellSouth  
11 provides eight months of poor performance and reaches a cap, the  
12 other four months of the year will receive no remedies at all and  
13 provide no incentive for BellSouth to correct its behavior,  
14 because they would not incur any remedies.

15           We think also the amounts are insufficient in their  
16 plan. They go from \$1.00 to \$15,000. And while some of the  
17 enforcement amounts do escalate, they all stop escalating at six  
18 months. And all of them do not escalate, and that is a problem  
19 we see with their plan.

20           The last thing that we wanted to touch on, briefly,  
21 were when the plan should go into effect. Ms. Cox for AT&T has  
22 testified that it should not go into effect until after 271  
23 approval. However, as I stated earlier, the Act requires  
24 BellSouth to provide parity service under Section 251,  
25 irrespective of whether it gets relief under 271 to offer

1 service. Therefore, we think it should go into effect prior to  
2 any 271 approval for BellSouth.

3 There are other commissions in the state of  
4 Pennsylvania, Massachusetts, Texas, that have enacted remedy  
5 mechanisms prior to 271 to offer incentive to comply with the  
6 requirements of 251 and 252.

7 The last issue that we are going to address, we will  
8 address in briefs. It's purely a legal issue, and it addresses  
9 this Commission's authority to order a plan, a remedy plan,  
10 without BellSouth's permission. We think this Commission has the  
11 authority under the Act to enact this plan, regardless of whether  
12 BellSouth agrees or not. And we will discuss that more fully in  
13 our briefs. But since it's purely a legal issue, we don't have  
14 any witnesses that will be presented on that topic.

15 CHAIRMAN JACOBS: Very well. Thank you. That takes  
16 care of opening statements. Staff, did you have openings?

17 MR. FUDGE: No, Commissioner.

18 CHAIRMAN JACOBS: Very well. Let's take up the  
19 stipulated exhibits, then, at this time.

20 MR. FUDGE: The first stipulated exhibit is the  
21 Official Recognition List with the amendment of two cases. We'd  
22 like to have that marked as Exhibit 1.

23 CHAIRMAN JACOBS: Show that marked as Exhibit 1.  
24 (Exhibit 1 marked for identification.)

25 MR. FUDGE: The next exhibit is the ALEC responses to

1 Staff discovery. We'd like to have that marked as Exhibit 2.

2 CHAIRMAN JACOBS: Show that marked as Exhibit 2.

3 (Exhibit 2 marked for identification.)

4 MR. FUDGE: The third is BellSouth's response to

5 Staff's discovery. Like to have that marked as Exhibit 3.

6 CHAIRMAN JACOBS: Exhibit 2 is a composite, right?

7 MR. FUDGE: Yes, Commissioner.

8 CHAIRMAN JACOBS: Okay. And we have BellSouth's

9 responses to Staff, show that marked as Exhibit 3, also a

10 composite.

11 (Exhibit 3 marked for identification.)

12 MR. FUDGE: The next one is the transcript of the

13 deposition of Staff witness Paul Stallcup. I'd like to have that

14 marked as Exhibit 4.

15 CHAIRMAN JACOBS: Now, I have a proprietary BellSouth

16 response. Should we mark that separately? In the documents that

17 we just marked as Exhibit 3, there is one section here that's

18 marked proprietary. Would you like to mark that as a separate

19 exhibit or keep it in the composite?

20 MR. FUDGE: Yes, Commissioner, we'll go ahead and mark

21 that as Exhibit 4.

22 CHAIRMAN JACOBS: Okay. So, we'll mark BellSouth's

23 proprietary response. Is there a proprie-- I didn't see one in

24 the responses of the ALECs and don't --

25 MR. FUDGE: No, Commissioner, there was only one for

1 BellSouth.

2 CHAIRMAN JACOBS: Okay. So, show that marked as

3 Exhibit 4.

4 (Exhibit 4 marked for identification.)

5 CHAIRMAN JACOBS: And then, the transcript to Mr. Coon,

6 is it?

7 MR. FUDGE: Mr. Stallcup's.

8 CHAIRMAN JACOBS: Show that marked as Exhibit 5.

9 (Exhibit 5 marked for identification.)

10 MR. FUDGE: The next one is the transcript of the

11 deposition and late-filed exhibits of David Coon. I'd like to

12 have that marked as Exhibit 6.

13 CHAIRMAN JACOBS: Show that marked as Exhibit 6.

14 (Exhibit 6 marked for identification.)

15 MR. FUDGE: Commissioner, for some of these, the ones

16 that have late-filed exhibits, the late-filed exhibits have not

17 been filed yet, but they will be filed, I believe, by May 1st.

18 CHAIRMAN JACOBS: Say again.

19 MR. FUDGE: Some of the late-filed exhibits to the

20 depositions since they occurred last week, they have not been

21 filed --

22 CHAIRMAN JACOBS: I see.

23 MR. FUDGE: -- with us yet. But they will be filed by

24 May 1st.

25 CHAIRMAN JACOBS: Would you like to mark those now

1 or --

2 MR. FUDGE: Yes, Commissioner. They're included with  
3 the depositions.

4 CHAIRMAN JACOBS: Okay. So, make all these composite,  
5 and there's an understanding that the composite transcript will  
6 include any late-filed exhibits. Okay. We're done with  
7 Mr. Coon's testimony -- I'm sorry, transcript.

8 MR. FUDGE: Next one is transcript of deposition and  
9 late-filed exhibits of William Taylor.

10 CHAIRMAN JACOBS: Show that marked as Exhibit 7.  
11 (Exhibit 7 marked for identification.)

12 MR. FUDGE: The next is the transcript of the  
13 deposition of Edward Mulrow. I don't believe he had any  
14 late-filed exhibits.

15 CHAIRMAN JACOBS: Show that marked as Exhibit 8.  
16 (Exhibit 8 marked for identification.)

17 MR. FUDGE: The next is the transcript of the  
18 deposition and late-filed exhibits of Karen Kinard.

19 CHAIRMAN JACOBS: Show that marked as Exhibit 9.

20 MS. McNULTY: Chairman Jacobs?

21 CHAIRMAN JACOBS: Yes.

22 MS. McNULTY: Ms. Kinard is still reviewing the  
23 deposition transcript, and we hope to have an errata sheet by the  
24 end of the day.

25 CHAIRMAN JACOBS: So, we can make that an addendum to

1 this exhibit?

2 MS. McNULTY: Yes.

3 CHAIRMAN JACOBS: She has an errata sheet?

4 MS. McNULTY: Yes.

5 CHAIRMAN JACOBS: Very well.

6 MS. McNULTY: Thank you very much.

7 CHAIRMAN JACOBS: Show that marked as Exhibit 9.

8 (Exhibit 9 marked for identification.)

9 MR. FUDGE: The next is the transcript and late-filed  
10 exhibits of Cheryl Bursh. I'd like to mark that Exhibit 10.

11 CHAIRMAN JACOBS: Oh, I see. The late-filed of  
12 Ms. Kinard is attached to hers?

13 MR. FUDGE: Yes, Commissioner.

14 CHAIRMAN JACOBS: It remains a composite, very well.  
15 Show that for Ms. Bursh is next, B-u-r-s-h?

16 MR. FUDGE: Yes, sir.

17 CHAIRMAN JACOBS: Show that marked as Exhibit 10.  
18 (Exhibit 10 marked for identification.)

19 MR. PRESCOTT: Mr. Chairman, along the same lines, as  
20 Ms. McNulty stated, Ms. Bursh is still reviewing her transcript  
21 as is Dr. Bell, and so we would like to attach any errata sheet  
22 that they provide after.

23 CHAIRMAN JACOBS: Very well. So, Dr. Bell and  
24 Ms. Bursh can each supplement their transcript with an errata  
25 sheet.

1 MR. PRESCOTT: Okay, thank you.

2 MR. FUDGE: The next is the transcript of the  
3 deposition of Robert Bell. There were no late-filed exhibits.  
4 I'd like to have that marked as Exhibit 11.

5 CHAIRMAN JACOBS: Show that marked as Exhibit 11.  
6 (Exhibit 11 marked for identification.)

7 MR. FUDGE: The last is the transcript of deposition  
8 and late-filed exhibits of George Ford.

9 CHAIRMAN JACOBS: Show that marked as Exhibit 12.  
10 (Exhibit 12 marked for identification.)

11 MR. McGLOTHLIN: Dr. Ford is also reviewing his  
12 transcript and needs the same opportunity to provide an errata  
13 sheet.

14 CHAIRMAN JACOBS: Very well. We'll proceed under the  
15 same arrangement with Dr. Ford.

16 MR. FUDGE: Staff would request that Exhibits 1 through  
17 12 be moved into the record at this time.

18 CHAIRMAN JACOBS: Without objection, show Exhibits 1  
19 through 12 are admitted into the record.

20 (Exhibits 1 through 12 admitted into the record.)

21 CHAIRMAN JACOBS: That takes care of all stipulated  
22 exhibits?

23 Now, do we want to take care of the witnesses who have  
24 been stipulated now? I'm sorry, we said we were going to do that  
25 in order, didn't we? Very well.



1 docket with pages numbered 1 through 19?

2 A Yes, I did.

3 Q Do you have any changes or corrections to your Direct  
4 testimony that's been filed?

5 A No, I don't.

6 MR. FUDGE: Mr. Chairman, may we have Mr. Stallcup's  
7 prefiled testimony inserted into the record as though read?

8 CHAIRMAN JACOBS: Without objection, show  
9 Mr. Stallcup's prefiled testimony is inserted into the record as  
10 though read.

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## DIRECT TESTIMONY OF PAUL W. STALLCUP

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Q: Would you please state your name and business address?

A: My name is Paul W. Stallcup. My business address is 2540 Shumard Oak Boulevard, Tallahassee, Florida, 32399.

Q: By whom and in what capacity are you employed?

A: I am employed by the Florida Public Service Commission as the Supervisor of the Economics and Forecasting Section in the Division of Economic Regulation.

Q: Would you please summarize your educational and professional experience?

A: I graduated from the Florida State University in 1977 with a Bachelor of Science degree in Economics with minors in Mathematics and Statistics. I received my Masters of Science Degree in Economics from the Florida State University in 1979 and, as a Ph.D. candidate, completed the course work and doctoral examinations required for that degree in 1980.

In 1981, I was employed by Florida Power and Light Company as a Load Forecast Analyst. In this capacity, I prepared short and long term forecasts of company sales, peak demand, and customer growth. In 1983, I was employed by the Florida Public Service Commission (the Commission) as an Economic Analyst and in 1991 was promoted to my current position as Supervisor of the Economics and Forecasting Section. In this capacity, I have analyzed and made recommendations on a variety of issues in all of the industries regulated by the Florida Public Service Commission. In addition, over the previous year I have been involved with the Commission's oversight of KPMG's third party test of BellSouth's Operational Support Systems.

Q: Have you previously testified before the Florida Public Service Commission?

1 A: Yes. In 1983 I testified on behalf of the Commission staff in the Florida  
2 Power and Light rate case (Docket No 830465-EI). In 1997 I testified on behalf  
3 of the staff in the Florida Power Corporation's proposed buy-out of Orlando Cogen  
4 Limited's energy contract (Docket No. 961184-EQ), and in 2000 I provided  
5 testimony in the Aloha Utilities rate case (Docket No. 991643-SU).

6 Q: What is the purpose of your testimony?

7 A: The purpose of my testimony is to present a proposal for a Performance  
8 Assessment Plan for BellSouth Telecommunications Inc. (BellSouth). This proposal  
9 is provided in Exhibit PWS-1 attached to my testimony. The plan is designed to  
10 help promote a competitive market environment for local exchange services by  
11 helping to insure that Alternative Local Exchange Carriers (ALECs) receive non-  
12 discriminatory access to BellSouth's Operational Support Systems (OSS). The plan  
13 achieves this goal by establishing a penalty payment mechanism designed to  
14 encourage BellSouth to provide ALECs access to its OSS at the same level of  
15 service BellSouth provides for itself.

16 Q: How did you arrive at this proposed plan?

17 A: The overall structure of the proposed plan is patterned closely after the  
18 Performance Assessment Plan recently approved in Georgia (Docket No. 7892-U,  
19 issued January 12, 2001). The Georgia plan was developed to monitor the  
20 BellSouth Operational Support Systems in Georgia which are virtually identical  
21 to those which exist in Florida.

22 Several aspects of the Georgia plan were modified to reflect recent  
23 decisions made by this Commission and to respond to comments provided by the  
24 parties at staff workshops. The most significant of these changes was the  
25 inclusion of the Service Quality Measures (SQMs) and their associated

1 | Benchmarks/Retail Analogs approved by this Commission for use in KPMG's OSS third  
2 | party test (Order No. PSC-00-2451-PAA-TP, Dockets Nos. 981834-TP and 960786-TL,  
3 | issued December 20, 2000).

4 | Q: Why are you offering this proposed plan?

5 | A: In the course of the workshops preceding this hearing, both BellSouth and  
6 | the ALEC community offered competing enforcement plans. Although these plans  
7 | differed significantly in the details of how a plan should be specified, at a  
8 | higher level they both shared the same overall structure.

9 | My proposed plan conforms to this overall structure. By presenting this  
10 | proposal and highlighting its overall structure, I hope to offer a conceptual  
11 | framework within which the parties may address their concerns on how the details  
12 | of the plan should be specified.

13 | Offering this proposal also permits me to provide the Commission with  
14 | background information for several areas of the plan where the parties have  
15 | advocated at the staff workshops very different ideas on how a portion of the  
16 | plan should be specified. However, I take no position on these issues. Rather,  
17 | it is my intent in offering this proposal, that the Commission refine my proposed  
18 | plan by incorporating the best ideas offered by the parties.

19 | Q: Turning now to the overall structure of the Enforcement Plan, would you  
20 | please summarize the main components of the plan?

21 | A: The proposed plan consists of four main components: 1) a Tier Structure  
22 | defining multiple levels of enforcement; 2) a set of Service Quality Measures  
23 | (SQMs) and a set of Enforcement Measures; 3) a calculation methodology used to  
24 | determine whether BellSouth is providing compliant service to ALECs as specified  
25 | by the terms of the plan; and 4) a Remedy Payment methodology to determine the

1 appropriate amount of any remedy payments in the event BellSouth fails to provide  
2 compliant service.

3 When viewed at this high level, I believe that it is fair to say that the  
4 plans proposed by BellSouth and the ALEC community during the staff workshops  
5 both conform to this overall structure. The proposals differ, however, on how  
6 the elements within this structure should be specified.

7 Q: Turning now to the first component of the Enforcement Plan, would you  
8 please describe the Tier structure and the purpose of the different tiers?

9 A: The proposed plan contains two levels, or tiers, of enforcement. The first  
10 tier provides for self-effectuating penalties paid directly to individual ALECs  
11 when BellSouth fails to provide compliant service to that ALEC. These remedy  
12 payments act as an incentive for BellSouth to provide compliant service to each  
13 ALEC and at least partially offset any damages which the ALEC may suffer as a  
14 consequence of receiving non-compliant service.

15 The second tier provides for self-effectuating penalties paid to the  
16 State's General Revenue Fund when BellSouth fails to provide compliant service  
17 on a statewide, or ALEC aggregate, basis. These remedy payments act as an  
18 incentive for BellSouth to promote a competitive local exchange market within its  
19 Florida service area.

20 Within each tier, the plan identifies the enforcement measures, the  
21 calculation methodology, and the remedy payment methodology to be used within  
22 that tier. I will discuss these components in detail later in my testimony.  
23 First, however, I would like to discuss some concerns regarding the Commission's  
24 authority to order remedy payments under the Tier 1 and Tier 2 enforcement  
25 mechanisms.

1 Q: What concerns do you see with respect to the Tier 1 enforcement mechanism?

2 A: Let me preface the following testimony by stating that I am not an  
3 attorney. Given this caveat, my performance assessment plan proposes a Tier 1  
4 enforcement mechanism in which self-executing penalties are paid directly by  
5 BellSouth to an individual ALEC when BellSouth delivers noncompliant performance.  
6 It is my understanding, however, that the Commission does not have the authority  
7 to order any payments that could be considered monetary damages. Therefore, it  
8 would appear that adoption of any Tier 1 enforcement mechanism would require that  
9 the parties enter into a voluntary agreement that these payments be made before  
10 the Commission could approve a Tier 1 enforcement mechanism.

11 Q: What concerns do you see with respect to the Tier 2 enforcement mechanism?

12 A: My performance assessment plan proposes a Tier 2 enforcement mechanism in  
13 which self-effectuating penalties are paid directly by BellSouth to the  
14 Commission for deposit in the State General Revenue Fund. It is my  
15 understanding that the Commission does not have the authority to receive penalty  
16 payments absent a finding of a willful violation of a Commission order, rule or  
17 statute. Such violations are normally determined through a process called a  
18 "show cause" proceeding which provides the party an opportunity to present a  
19 case as to why it should not be fined for the alleged violation. In order to  
20 make the Tier 2 enforcement mechanism self-effectuating and avoid potentially  
21 frequent and lengthy "show cause" proceedings, my plan proposes that any Tier 2  
22 payments be based upon an agreement by BellSouth that any failure to provide  
23 compliant service under Tier 2 would constitute a willful violation of the final  
24 order resulting from this docket. In addition, the agreement would obligate  
25 BellSouth to remit any penalties resulting from Tier 2 to the Florida Public

1 Service Commission for deposit in the State's General Revenue Fund.

2 Q: Given these concerns regarding the Commission's authority to order Tier 1  
3 and Tier 2 enforcement mechanisms, do you have any suggestions about how these  
4 concerns may be resolved?

5 A: Yes. I would suggest that the parties provide in their testimony and  
6 briefs their views on how Tier 1 and Tier 2 enforcement mechanisms can be made  
7 self-effectuating. Based upon the comments provided by the parties at the staff  
8 workshops, I believe both BellSouth and the ALECs acknowledge that the self-  
9 effectuating characteristic of an enforcement mechanism is essential. Without  
10 this characteristic, the plan could lack the necessary immediacy to encourage  
11 BellSouth to provide compliant service to ALECs, and could also burden this  
12 Commission and the parties with frequent and lengthy evidentiary proceedings.

13 Q: Turning now to the second component of the Enforcement Plan, would you  
14 please describe the SQMs and the Enforcement Measures and the purposes they are  
15 intended to serve?

16 A: Both the SQMs and the Enforcement Measures are a collection of individual  
17 measures (sometimes referred to as "metrics"). A measure identifies a single  
18 quantifiable aspect of BellSouth's Operational Support Systems. For example, the  
19 measure titled "Percent Missed Installation Appointments" quantifies as a  
20 percentage the frequency with which BellSouth failed to install ALEC customer  
21 equipment on the committed due date.

22 The SQMs are a broad set of 57 measures spanning the entire range of OSS  
23 functional categories including pre-ordering, ordering, provisioning, maintenance  
24 & repair, billing, operator services & directory assistance, E911, trunk group  
25 performance, collocation, and change management. These measures are listed in

1 Exhibit A of the proposed plan and include the SQMs approved by this Commission  
2 for use in KPMG's third party test. Sections 2.1 and 2.3 of the proposed plan  
3 would require BellSouth to make available on its website the monthly data and  
4 reports for each of these measures.

5 Although the SQMs are not used to directly determine compliance, they do  
6 serve as a diagnostic "radar screen" to identify potential bottlenecks within  
7 BellSouth's OSS. Should a bottleneck develop in the future, the SQM measure  
8 identifying the problem area could be readily added to the set of Enforcement  
9 Measures.

10 The Enforcement Measures specified in the proposed plan are a subset of the  
11 SQMs and are the measures upon which compliance and possible remedy payments will  
12 be based. These measures are listed in Exhibit B of the proposed plan.

13 These measures were selected for enforcement purposes for several reasons.  
14 First, they span a wide range of OSS functional categories and tend to focus on  
15 customer-affecting aspects of OSS performance. Second, they include measures  
16 which quantify aspects of OSS performance of particular interest to ALECs such  
17 as local number portability (LNP) and loop-makeup information. Finally, the  
18 selected measures tend not to overlap in the sense that an instance of non-  
19 compliance for one measure will not simultaneously be counted in another measure.  
20 Avoiding this type of double counting helps prevent multiple remedy payments  
21 resulting from a single case of non-compliance.

22 Q: Before explaining the next major component of your proposed plan, would you  
23 please describe the different parts of a measure's specification?

24 A: A measure is specified by its eight parts. The first part is the measure's  
25 definition. This definition identifies the particular aspect of OSS performance

1 | it is designed to quantify.

2 |         The second part is the Exclusions. Exclusions are specific instances of  
3 | OSS activity which should be logically excluded from the measure's calculations.  
4 | For example, an exclusion for the measure "Percent Missed Installation  
5 | Appointments" would be an installation appointment canceled by an ALEC's  
6 | customer.

7 |         The third part of a measure's specification are the Business Rules. These  
8 | rules identify the data used to calculate the measure, how that data will be  
9 | defined for purposes of calculating the measure, and other specific matters  
10 | relating to the quantification of the measure.

11 |         The fourth part of a measure is the Calculation. This part specifies the  
12 | exact mathematical formula used to quantify the measure.

13 |         The fifth part is the Report Structure. This part specifies how the  
14 | measure's data will be reported. Reports may be structured to provide results  
15 | for individual ALECs, for the aggregate of all ALECs, for BellSouth's Florida  
16 | service area, or for BellSouth's entire regional service area.

17 |         The sixth part is the Level of Disaggregation for a measure. This part  
18 | shows how the data collected for the measure will be broken down into more  
19 | detailed categories. In my proposal, the measures are broken down into product  
20 | categories like Resale Residence, Resale Business, UNE Loop and Port Combos, and  
21 | so forth. Another alternative disaggregation scheme would be to break the data  
22 | down to specific product offerings. These levels of disaggregation are sometimes  
23 | referred to as sub-measures.

24 |         In addition to disaggregating by specific products or product categories,  
25 | the data is broken down further by factors such as geographical location (e.g.

1 wire center) and time of the month. Data broken down to this level of  
2 disaggregation is referred to "cell level" data.

3 The purpose behind disaggregation is to account for all the factors that  
4 may influence differing levels of OSS performance other than non-compliance.  
5 By the time the data for a measure has been disaggregated down to the cell level,  
6 all systematic influences on OSS performance should be accounted for. Any  
7 remaining differences at the cell level may therefore be attributable to  
8 disparate service provided to ALECs by BellSouth.

9 The seventh part of a measure's specification lists the Data Retained  
10 Relating to the ALEC and BellSouth. This is the raw data that is used to  
11 calculate the measure for both an ALEC and, if there is a similar service  
12 BellSouth performs for itself, any BellSouth data.

13 The eighth and final part of a measure is the Benchmark or Retail Analog.  
14 This part of the measure identifies the standard which BellSouth must meet in  
15 order to provide compliant service. A retail analog is a service that BellSouth  
16 provides for itself, and should be comparable to the Operational Support System  
17 service BellSouth provides to ALECs. The level of service BellSouth provides to  
18 itself becomes the standard for the level of service BellSouth must provide to  
19 ALECs (this level of service is referred to as "parity"). For those measures for  
20 which no retail analog exists, the standard is defined by a benchmark. A  
21 benchmark is a level of service set sufficiently high that it does not represent  
22 an impediment to an ALEC's ability to compete.

23 Q: Turning now to the third component of the Enforcement Plan, would you  
24 please describe the methods used to determine compliance?

25 A: There are several methods available to determine if BellSouth's performance

1 is compliant. The first and simplest approach is a direct comparison of  
2 BellSouth's performance data to the standard (e.g. the measure's benchmark/retail  
3 analog) it is required to meet under the plan. For example, if the standard for  
4 a measure such as "OSS Availability" is set at 98%, then BellSouth would be in  
5 compliance only if OSS availability remained equal to or above 98%. This  
6 approach is sometimes referred to as "bright lining". During the staff  
7 workshops, the parties have supported that this approach is appropriate for those  
8 measures which use a benchmark as the standard.

9 For those Enforcement Measures that use a retail analog as a standard,  
10 statistical techniques are used to determine if any observed difference is  
11 significant. During the staff workshops, two statistical tests have been offered  
12 by BellSouth and the ALECs as appropriate, the Modified Z-Test and the Truncated  
13 Z-Test. Both are derived from the standard Z test statistic which relies on the  
14 familiar bell-shaped probability distribution.

15 The Modified Z-Test (proposed by the ALECs) is a test to determine if any  
16 observed disparity in performance between BellSouth's retail analog and the  
17 service an ALEC receives is statistically significant. This test is performed  
18 at the cell level of disaggregation where all systematic factors influencing  
19 differing levels of OSS performance have been accounted for. Any remaining  
20 disparity in service provided to ALECs is then evaluated statistically by the  
21 Modified Z-Test. If the test concludes the remaining disparity is statistically  
22 significant (e.g. greater than what could be expected from random chance alone),  
23 BellSouth would be deemed to be non-compliant for that Enforcement Measure at  
24 that level of disaggregation.

25 The Truncated Z-Test (proposed by BellSouth) begins the same way as the

1 Modified Z-Test in that a Modified Z-Test is performed at the cell level as  
2 described above. However, the cell level Modified Z-Tests are then aggregated  
3 up to the sub-measure, or product grouping, level. The aggregation of the cell  
4 level Modified Z-Tests result in a single test statistic referred to as the  
5 Truncated Z-test. The Truncated Z-test is then used to determine if BellSouth  
6 provided non-compliant service at the sub-measure level.

7 Q: What other considerations are there concerning the use of statistical  
8 tests?

9 A: Another facet to the statistical tests being offered is the inclusion of  
10 the Balancing Critical Value technique. This technique attempts to balance the  
11 risk faced by BellSouth or an ALEC resulting from an erroneous statistical  
12 decision. These risks are referred to by statisticians as Type 1 and Type 2  
13 errors. Specifically, if a statistical test shows that BellSouth is providing  
14 non-compliant service when in fact it is providing compliant service, BellSouth  
15 will be harmed (Type 1 Error). Similarly, if a statistical test shows that  
16 BellSouth is providing compliant service when in fact it is providing non-  
17 compliant service, the ALEC will be harmed (Type 2 Error). The Balancing  
18 Critical Value technique offers a means to equalize these risks so that the  
19 Enforcement Mechanism will not be biased towards either BellSouth or the ALECs.

20 Inclusion of the Balancing Critical Value technique has the intuitive  
21 appeal of balancing the interests of both BellSouth and the ALECs. However, in  
22 order to implement this technique, it is necessary to specify an additional input  
23 parameter called the "delta value". In the context of this enforcement  
24 mechanism, delta represents a level of disparate service provided to an ALEC  
25 which can be tolerated before a meaningful harm is done to the ALEC's opportunity

1 | to compete. Including delta into the statistical tests means that, in order to  
2 | detect non-compliance, any observed disparity must be sufficiently large to  
3 | threaten an ALEC's opportunity to compete as measured by the size of delta.

4 | Statistical tests incorporating the Balancing Critical Value technique are  
5 | very sensitive to changes in the value of delta. As the value of delta becomes  
6 | larger, the magnitude of disparate service the statistical test will tolerate  
7 | before detecting non-compliance also becomes larger.

8 | Q: How can an appropriate value of delta be determined?

9 | A: I am not aware of any methodology that provides a definitive answer to  
10 | this question. In the context of this enforcement plan, an appropriate value for  
11 | delta would reflect the extent to which an ALEC could receive disparate service  
12 | from BellSouth without suffering competitive harm. This is a question that, in  
13 | my opinion, can only be answered by experts in the market for local exchange  
14 | services. The parties, however, through their comments at staff workshops, have  
15 | offered values of delta ranging from 0.25 to 1.00. These values for delta  
16 | represent very different views on what constitutes competitive harm.

17 | Q: Are there any other statistical considerations that should be addressed  
18 | concerning the Balancing Critical Value approach?

19 | A: Yes. One statistical consideration arising from the adoption of the  
20 | Balancing Critical Value technique concerns the unusually large values of the Z  
21 | test statistic resulting from large sample sizes. In the context of this  
22 | enforcement plan, this means that, for any given value of delta, as the number  
23 | of ALEC transactions with BellSouth's OSS increases, the likelihood of detecting  
24 | non-compliance will decrease. That is, as sample sizes become large, the Z test  
25 | statistic must become very large before non-compliance is detected. This

1 characteristic resulting from the adoption of the Balancing Critical Value  
2 technique may be minimized by the use of a "floor" for the Z test statistic.  
3 This numerical floor for the Z statistic comes into play by establishing a lower  
4 limit on the magnitude a Z score must attain before non-compliance is detected.

5 Another consideration arising from the adoption of the Balancing Critical  
6 Value technique addresses a more fundamental issue of whether it is appropriate  
7 at all to include delta in a statistical determination of parity. A typical  
8 statistical test for parity (e.g. a Z-test that does use the Balancing Critical  
9 Value technique) would base its conclusion on whether or not any observed  
10 disparity could simply be attributable to random chance alone. Incorporating the  
11 Balancing Critical Value technique and its delta value into this evaluation means  
12 that, in order to detect non-compliance, any observed disparity must not only be  
13 greater than what could occur by random chance alone but also be large enough to  
14 threaten an ALEC's opportunity to compete. This issue addresses whether the  
15 inclusion of delta into the statistical evaluation process constitutes a  
16 refinement to the basic statistical test or a subversion of the test's original  
17 intent.

18 The inclusion of delta through the Balancing Critical Value technique, as  
19 I described earlier, allows the statistical tests to balance the risks of an  
20 incorrect decision (e.g. to balance the likelihood of Type 1 and Type 2 errors).  
21 If the Balancing Critical Value technique were not used, the statistical tests  
22 would only be able to control for Type 1 errors leaving the risk of Type 2 errors  
23 unaccounted for. In the context of this enforcement plan, Type 2 error  
24 represents the risk of erroneously deciding BellSouth is providing compliant  
25 service when in fact it is not. Controlling for Type 2 error helps to protect

1 ALECs from this kind of erroneous conclusion. Seen in this light, adoption of  
2 the Balancing Critical Value technique represents a trade-off for ALECs. On one  
3 hand they gain some protection from the risk of Type 2 errors, but on the other  
4 they must accept that the statistical tests (because of the inclusion of the  
5 value of delta) will be less likely to detect non-compliance.

6 Q: What statistical methodology is contained in your proposal?

7 A: My proposal specifies the use of the Truncated Z-Test for use in both Tier  
8 1 and Tier 2. The proposal also includes use of the Balancing Critical Value  
9 technique with a delta value of 0.5 for Tier 1 and 0.33 for Tier 2. No "floor"  
10 value for the Truncated-Z test statistic is specified for either tier.

11 Q: Turning now to the fourth component of the Enforcement Plan, would you  
12 please describe the methods being proposed for assessing remedy payments for non-  
13 compliant service?

14 A: There are two methods that were proposed by the parties at the staff  
15 workshops as appropriate for calculating remedy payments. The first is a  
16 "measures-based system" which has been proposed by the ALECs, and the second is  
17 a "transactions-based system" which has been proposed by BellSouth. Both methods  
18 are equally applicable to Tier 1 and Tier 2 enforcement.

19 The "measures-based system" is predicated on assigning a dollar penalty  
20 amount to each measure, sub-measure, or cell specified within the Enforcement  
21 Measures. If BellSouth should fail to provide compliant service for one of these  
22 measures, sub-measures, or cells, the "measures-based system", in its simplest  
23 form, sets the penalty at the dollar amount specified within the payment schedule  
24 for that measure.

25 The "transaction-based system" is predicated on assigning a dollar penalty

1 amount to each individual instance, or transaction, in which an ALEC receives  
2 non-compliant service. If BellSouth should fail to provide compliant service for  
3 one of these measures, sub-measures, or cells, the "transactions-based system",  
4 in its simplest form, would calculate the number of transactions that received  
5 non-compliant service and multiply that number by the associated dollar penalty  
6 amount found in the payment schedule. This method allows the overall size of the  
7 remedy payment to reflect the number of actual transactions that received non-  
8 compliant service.

9 Both remedy payment methods contain two additional features that allow the  
10 basic penalty amounts to be increased. The first feature increases the penalty  
11 amounts in response to increases in the degree, or severity, of the non-  
12 compliance. The second feature increases the penalty amounts in response to the  
13 number of consecutive months a measure has been found to be non-compliant.  
14 These features introduce the similar concepts that penalties should be larger  
15 when non-compliance is more severe or when it is longer in duration.

16 Q: What remedy payment method is specified in your proposal?

17 A: My proposed plan specifies the "transactions-based system" for both Tier  
18 1 and Tier 2. Sections 4.5.1 through 4.5.3 of the proposed plan contain the  
19 Tier 1 penalty payment schedule. Sections 4.5.4 through 4.5.6 describe similar  
20 parameters for Tier 2 enforcement.

21 Q: Are there any other features included in the proposed plan that you would  
22 like to describe?

23 A: Yes, there are four additional features I would like to describe. These  
24 are 1) the Market Penetration Adjustment, 2) the Competitive Entry Volume  
25 Adjustment, 3) the Enforcement Mechanism Cap, and 4) the Modifications to

1 Measures.

2 Q: Would you please describe the Market Penetration Adjustment described in  
3 Section 5 of your proposed plan?

4 A: This adjustment to the basic remedy payment mechanism is intended to  
5 bolster competition in the statewide market for advanced and nascent services  
6 like xDSL and Line Sharing. The adjustment applies only to Tier 2 and adds an  
7 additional level of penalties if BellSouth fails to provide compliant service for  
8 UNE Loop and Port Combos, UNE xDSL, and UNE Line Sharing for each of the five  
9 measures listed in Section 5.2. Because this adjustment is intended to assist  
10 the development of newer services with relatively low volumes, my proposed plan  
11 specifies that this adjustment will apply only if the number of monthly  
12 transactions for a sub-measure is 100 or less.

13 Q: Would you please describe the Competitive Entry Volume Adjustment described  
14 in Section 6 of your proposed plan?

15 A: This adjustment to the basic remedy payment mechanism is intended to help  
16 protect a small ALEC's ability to establish and maintain a presence in the local  
17 exchange market. The adjustment  
18 applies to all sub-measures in Tier 1 and is focused on those ALECs with small  
19 monthly volumes. My proposal would treble the basic per-transaction penalty  
20 amounts for a sub-measure if there are 25 or fewer transactions per month for an  
21 ALEC, and double the payment if there are between 25 and 50 transactions per  
22 month.

23 Q: Why do you believe that features like the Market Penetration Adjustment and  
24 the Competitive Entry Volume Adjustment are appropriate for inclusion in your  
25 proposed plan?

1 A: Both of these adjustments deal with special situations where the number of  
2 transactions are small. In a "transaction-based system" like the one contained  
3 in my proposal, the normal remedy payment amounts in these cases may not be  
4 sufficient to provide an effective incentive for BellSouth to provide compliant  
5 service. These adjustments help eliminate this characteristic by increasing the  
6 remedy payments in these special situations.

7 Q: Would you please describe the Enforcement Mechanism Cap described in  
8 Section 4.8 of your proposed plan?

9 A: An enforcement mechanism cap places a limitation, or cap, on the total  
10 amount of penalties BellSouth may be liable for under the plan. There are two  
11 types of caps, an absolute cap and a procedural cap.

12 An absolute cap is a fixed percentage of net operating revenues that places  
13 an upper limit on the penalties BellSouth could incur. In the event BellSouth's  
14 performance should deteriorate to the point where the penalties reach the cap,  
15 an absolute cap would provide no incentive for BellSouth to prevent further  
16 deterioration in performance.

17 A procedural cap establishes a percentage of net operating revenues up to  
18 which BellSouth would be liable for self-effectuating penalties. Beyond this  
19 level, however, BellSouth would be required to file a petition with the  
20 Commission for a hearing to show why it should not be held liable for penalty  
21 amounts in excess of this percentage. With this type of cap, BellSouth could  
22 be found liable by the Commission for penalty amounts in excess of the amount  
23 established by the procedural cap.

24 My proposed plan includes a procedural cap for the total amount of self-  
25 effectuating Tier 1 and Tier 2 penalties. The plan specifies that this cap be

1 set at 39 percent of BellSouth's net operating revenues resulting from its  
2 Florida operations.

3 Q: Would you please describe the Modifications to Measures described in  
4 Section 3 of your proposed plan?

5 A: This feature involves the proposed six month review cycle. Section 3 of  
6 the proposed plan specifies that during the first two years of the plan's  
7 implementation, BellSouth and interested ALECs will participate in a six-month  
8 review cycle process. This review process allows the details of the plan to be  
9 revisited regularly and gives the Commission the ability to refine the plan in  
10 response to actual marketplace performance. Another benefit of the review  
11 process is that it provides the means for the Commission to incorporate the  
12 results of KPMG's OSS third party test into the plan. This test will address the  
13 adequacy of the SQMs and their associated Benchmarks/Retail Analogs, and serve  
14 as a basis for establishing an appropriate set of Enforcement Measures.

15 Q: Are there any other potential issues not directly addressed within the plan  
16 that you would like to discuss?

17 A: Yes, there is one remaining potential issue that I believe is appropriate  
18 to discuss at this point. This issue addresses how BellSouth's provision of  
19 service to its own affiliates should be considered within the context of this  
20 enforcement plan.

21 This issue arises because a fundamental premise of the proposed plan is  
22 that BellSouth should be required to provide all ALECs with the same level of  
23 service it provides to itself. However, if BellSouth should choose to do so, an  
24 affiliated ALEC of BellSouth could be provided with very superior service while  
25 other ALECs were provided with a level of service just equal to that BellSouth

1 provides to itself. This disparity in service would go undetected under my  
2 proposed plan.

3 Q: How could your proposal be modified to account for this possible disparity  
4 in service?

5 A: One possibility would be to utilize the level of service BellSouth provides  
6 to its affiliates as the retail analog used to determine compliance. Another  
7 possibility might be to utilize the higher of either the BellSouth or BellSouth  
8 affiliate level of service as a suitable retail analog. These possibilities were  
9 not fully explored in the staff workshops and were therefore not included in my  
10 proposal. However, because of the implications this issue may have upon  
11 competition in Florida, I hope that the parties will provide testimony on this  
12 issue so that it may be more fully explored during the hearing.

13 Q: Does this conclude your testimony?

14 A: Yes.

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1 BY MR. FUDGE:

2 Q Mr. Stallcup, did you also file Exhibit number PWS-1?

3 A Yes, I did.

4 Q Do you have any changes or corrections to that exhibit?

5 A No, I don't.

6 MR. FUDGE: Chairman, may we have that exhibit  
7 identified as Exhibit 13?

8 CHAIRMAN JACOBS: Show that exhibit is identified as  
9 Exhibit 13.

10 (Exhibit 13 marked for identification.)

11 BY MR. FUDGE:

12 Q Mr. Stallcup, have you prepared a summary of your  
13 testimony?

14 A Yes, I have.

15 Q Would you please give that now?

16 A Yes. My testimony presents a performance assessment  
17 plan for BellSouth Telecommunications. This proposed plan,  
18 sometimes referred to as Staff's strawman proposal, evolved over  
19 the course of several workshops that preceded this hearing.

20 The purpose of offering the strawman during these  
21 workshops was to elicit comments from the parties and to identify  
22 the major issues in dispute. I carry the same purpose forward  
23 into my testimony today; that is, the purpose of my testimony is  
24 to provide the Commission with a conceptual framework for a  
25 performance assessment plan in which the issues in dispute can be

1 explored. In so doing, I take no position on any issue in this  
2 docket.

3 Let me begin by noting the conceptual framework that I  
4 use to understand the issues involved in a performance assessment  
5 plan. I think, it's convenient to view a performance assessment  
6 plan, be it either BellSouth's plan or the ALEC plan, as having  
7 four primary parts.

8 These parts are a tier structure that defines a level  
9 of enforcement for which penalties would be paid. The second  
10 part is a set of enforcement measures that specify specific  
11 aspects within BellSouth's operational support system for which  
12 compliance will be monitored and potentially remedies paid. The  
13 third part is a statistical methodology that analyzes the data  
14 coming out of the enforcement measures and is used to decide  
15 whether or not BellSouth has provided discriminatory service to  
16 ALECs. It's the decision tool, if you will.

17 The final part of a performance assessment plan is the  
18 penalty payment mechanism. This mechanism translates any  
19 detected discriminatory service into penalty payments paid by  
20 BellSouth. So, conceptually, I can view every issue in this case  
21 within these four component parts, and I can frame what's  
22 relevant for each issue as to the function that each part is  
23 supposed to accomplish.

24 What I'd like to do in my summary is to very quickly  
25 summarize what I believe are eight major issues this Commission

1 has to resolve. And I'm going to do this in the concept of the  
2 four-part scheme or conceptual framework that I just outlined.

3 Now, at the risk of stating the obvious, I'm going to  
4 describe these issues from the point of view of a member of a  
5 Public Service Commission Staff; that is, I look at issues from  
6 the point of view of how issues can be resolved that the parties  
7 have brought to us. So, that is my framework in looking at  
8 things when I describe these issues. And I'm going to do this  
9 very quickly, because I think in the opening statements, the  
10 parties did a pretty good job of delineating what the issues are.

11 First of all, with respect to the first part of  
12 performance assessment plan, the tier structure, I think, there's  
13 only one major issue here and that's the legal issue that was  
14 alluded to. That issue has to do with the Commission's legal  
15 authority to order remedy payments under either Tier 1 or Tier 2.  
16 Now, that's an issue best left to attorneys, so that's about all  
17 I have to say on that score.

18 With respect to the second component or primary part of  
19 the enforcement plan, the enforcement measures here, I think, we  
20 need to resolve three separate things, three issues. The first  
21 issue centers on what individual measures are appropriate for  
22 inclusion into the enforcement measures of an enforcement plan;  
23 that is, we need to think about what is the appropriate scope of  
24 measures that should be included.

25 BellSouth, in my opinion, has indicated a very focused

1 set of measures that would be appropriate for an enforcement  
2 plan. The ALECs, I believe, argue for a more comprehensive set  
3 of measures, if you will, thinking that if something's worth  
4 measuring, perhaps it's worth having a penalty associated with.  
5 We need to resolve that particular issue.

6           The second issue within the enforcement measure section  
7 that we need to look at is what are the appropriate values for  
8 the benchmarks and retail analogs for each one of the measures  
9 included in the enforcement plan? As indicated earlier during  
10 the opening statements, these benchmarks and retail analogs are  
11 the yardstick by which compliance is determined. It's the bar,  
12 if you will, that BellSouth has to be able to reach.

13           The third issue involving the enforcement measures is  
14 one that, I think, is very important, because it not only is  
15 involved in enforcement measures but kind of has the effect of  
16 flowing downstream and affecting other issues as well, and that  
17 is the issue of the appropriate level of disaggregation within  
18 the enforcement measures included in an enforcement plan.

19           Now, basically, what disaggregation is doing is that  
20 for each measure that we're looking at, let's take missed  
21 installation appointments; for example, it's appropriate to take  
22 that bundle of data, if you will, and break it down into separate  
23 buckets, so that when we come around to doing statistical tests  
24 in one bucket we may be looking at missed installation  
25 appointments for residential customers only and then in another

1 bucket for business customers, so forth and so forth.

2 Disaggregation is the idea of getting all that data  
3 down to the point where you're doing your statistical test,  
4 you'll be comparing like-to-like things for BellSouth and for the  
5 ALECs. That's a very important thing to do for the purposes of  
6 successfully conducting a statistical test.

7 My rather crude characterization of the two proposals  
8 offered by BellSouth and the ALECs is that BellSouth thinks that  
9 it's suitable to disaggregate down into what I call, and may  
10 perhaps somewhat crudely, product categories, groupings or  
11 disaggregations of very similar products within each bucket  
12 feeling that that is sufficient to get like-to-like comparisons.

13 The ALECs, as I understand it, or would characterize  
14 it, prefer to disaggregate more finally, if you will, that into  
15 specific products rather than product categories, thinking that  
16 that is more appropriate. Determination of this issue, the  
17 determination of the appropriate disaggregation method to use for  
18 the enforcement measures is, in my mind, one of the major issues  
19 that we have to resolve.

20 The third area concerns statistical methodology. And,  
21 I think, one of the opening statements indicated that we have  
22 four statisticians to talk during this hearing and, well, that's  
23 a lot of statisticians. Inside the statistical methodology area,  
24 I think, there are really only two issues that we need to  
25 consider. The first issue involves which of the two competing

1 statistical tests, BellSouth's truncated z test or the ALECs'  
2 modified z test, is appropriate for use in an enforcement plan  
3 like we're looking at here.

4 In the course of the workshops that preceded this  
5 hearing, it's my belief that the statistical experts from both  
6 BellSouth and the ALECs agree that if this Commission adopts the  
7 disaggregation scheme proposed by BellSouth, then BellSouth's  
8 statistical test is the appropriate one to adopt.

9 On the other hand, if this Commission should decide  
10 that the ALECs' disaggregation scheme is appropriate, then the  
11 ALECs' test statistic is the appropriate one to use. In my mind,  
12 looking at ways to perhaps find solutions to these issues, I  
13 believe, that it may be possible to consider this issue of the  
14 appropriate test statistic as a fallout issue determined by the  
15 level of disaggregation.

16 Now, to the extent that I misspoke, I trust that the  
17 parties will point out the error of my ways, but to some extent I  
18 believe some parts of that statistical issue can be resolved by  
19 the disaggregation technique selected.

20 The second statistical issue that we're going to have  
21 to take a look at, and this is certainly not going to be a  
22 fallout issue, has to do with the use of something called a  
23 balancing critical value and the appropriate value for the  
24 parameter of delta.

25 If I may, I'd like to take five minutes here just to

1 provide an opportunity for me to explain to you what the  
2 parameter of delta is. I think, that may be useful. So, if you  
3 will indulge me, allow me to go down this road just for a minute.  
4 I think, this may be the only really useful thing I do in this  
5 hearing.

6           The issue of delta arises because we have to use  
7 statistical techniques to determine whether BellSouth is  
8 providing ALECs with discriminatory service. When we use  
9 statistics in this way, as our decision tool, we can never be  
10 absolutely certain that we're making a correct decision.

11           We're familiar with the phrase that I'm 95% certain  
12 that some occurrence happens. Well, we can be 95% right -- I  
13 mean, we can be right 95% of the time, but 5% of the time we're  
14 going to be wrong. When we use statistics, there's always a  
15 chance that we're wrong.

16           In the context of an enforcement plan, these ways of  
17 getting things wrong when you use statistics, there are two ways  
18 that we can make a mistake using statistics in this enforcement  
19 plan. One way is to conclude that BellSouth is providing non --  
20 is not providing nondiscriminatory service when, in fact, it is  
21 concluding that they're not providing parity service when, in  
22 fact, they are. This would harm BellSouth and cause them to pay  
23 penalty payments when, in fact, they shouldn't be.

24           The other way to make an incorrect decision would be to  
25 conclude that BellSouth is providing nondiscriminatory service

1 when, in fact, it is not. This would be harmful to the ALECs,  
2 because they would not be receiving the level playing field that  
3 they're looking for and also not be provided any penalty payments  
4 that they might be due.

5           While we can never be absolutely -- we can never  
6 completely avoid the risk of making an incorrect decision, there  
7 is a way to build into our statistical test, a way to balance the  
8 risks to both BellSouth, on one hand, from an incorrect decision  
9 that would harm them and the risk associated with an incorrect  
10 decision against the ALECs.

11           We can balance the risk of making an incorrect decision  
12 through the adoption of a statistical technique called the  
13 balancing critical value technique. That is its one and only  
14 purpose, to balance risks faced by BellSouth under this plan and  
15 faced by the ALECs under this plan. In my view, it's a very  
16 desirable thing to attempt to do, because it makes the plan  
17 even-handed and unbiased.

18           The price we have to pay of adding this feature to the  
19 statistical test is we have to identify or specify an additional  
20 input parameter or input assumption, if you will, into the  
21 statistical test in order to use the balancing critical value  
22 technique, and this additional parameter is called delta. Before  
23 we can use the balancing critical value technique, we've got to  
24 make up a value of delta and stick it into the arithmetic in  
25 order to have the statistical test function.

1           What delta is, in the context of this enforcement plan,  
2 is that delta is a number that translates into the degree of  
3 separation, if you will, between the level of service that  
4 BellSouth provides to itself. It's a degree of separation  
5 between that level of service BellSouth provides to itself and  
6 the level of service BellSouth provides to ALECs that has to  
7 exist, that degree of separation, that has to exist between the  
8 two levels of the service before the statistical test will detect  
9 discriminatory behavior. Delta is that input parameter that  
10 describes the degree of the separation of service that has to  
11 exist between BellSouth's service to itself and the service  
12 provided to ALECs before the statistical test will detect  
13 discriminatory behavior.

14           COMMISSIONER JABER: Said another way, is it how we  
15 define parity? And at some point --

16           MR. STALLCUP: Yeah. I think, I would change it just  
17 slightly and say how far away from parity does the ALEC service  
18 have to be before you declare that nonparity exists.

19           COMMISSIONER JABER: And that's when the penalties kick  
20 in.

21           MR. STALLCUP: That's correct.

22           COMMISSIONER JABER: Okay.

23           CHAIRMAN JACOBS: One of the positions, I think, I  
24 heard in the opening statements is that, arguably, the Act  
25 requires zero as a delta.

1 MR. STALLCUP: I've heard that argument.

2 CHAIRMAN JACOBS: And, I assume, you don't agree.

3 MR. STALLCUP: Quite frankly, sir, I have not made up  
4 my mind yet.

5 CHAIRMAN JACOBS: Okay. If you deviate from delta --  
6 from zero, rather, to what extent are the statistical anomalies  
7 responsible; i.e., sample size and such? To what extent should  
8 we allow some variation of delta, based on that, and then some  
9 actual variation of delta based on the experiences; i.e., as a  
10 public policy matter, we have to make a decision about how much  
11 of that delta has to do with how much you want to vary away from  
12 zero or some number to allow BellSouth services to itself to  
13 fluctuate in relation to the service it provides to ALECs.

14 What I'm trying to get at is to what extent should we  
15 look at this very technical number which has some anomalies due  
16 to statistics in it and then some anomalies that are actually due  
17 to the difference in service. Is it possible to get to that  
18 level definition here? Do we just have to accept .25 or .5 or 1  
19 or --

20 MR. STALLCUP: No, Commissioner, I don't think that we  
21 do. I'm kind of jumping ahead here.

22 CHAIRMAN JACOBS: Okay. Well, go ahead. If you're  
23 going to reach that point, go ahead.

24 MR. STALLCUP: All right. And if I don't answer the  
25 question by the time I'm done, come back to me, please.

1 Well, I just talked about what delta is, that  
2 separation between the level of service. Larger values of delta  
3 make the degree of separation of service larger so that the  
4 statistical test incorporating larger values of delta will  
5 require that separation of service be greater before  
6 discriminatory service is detected.

7 Smaller values of delta make that degree of separation  
8 smaller, such that the statistical test will more quickly detect  
9 discriminatory behavior or conclude discriminatory behavior. As  
10 mentioned earlier, just to give you a sense of what large and  
11 small values of delta are, BellSouth proposes a value of delta of  
12 one, and the CLEC for Tier 1 enforcement purposes and the CLEC's  
13 proposed usage, no greater than 0.25. So, at least in my mind,  
14 based on comments made and in workshops, that's what large and  
15 small is; one is a large number, I guess, and .25 is small.

16 Now, the real problem with delta -- I mean, I've heard  
17 a lot about it in workshops and we'll hear a lot about it here,  
18 the real problem with delta is that no expert out there that I've  
19 heard has been able to come up with a recipe or a procedure or  
20 anything else that tells us how to exactly specify what the  
21 appropriate value is.

22 One consistent theme is that delta is not a  
23 statistically-determined number, rather, it's a number that  
24 should reflect the knowledge of experts in the industry, because  
25 what we're doing with delta here is saying, now, how far away

1 does ALEC service have to be before we declare discrimination?

2 Well, now, that requires some knowledge of the  
3 industry. What degree of separation should we use for missed  
4 installation appointments could very well differ than what we use  
5 for some pre-ordering metric. And so, that requires knowledge of  
6 the industry and is not something that I would personally be able  
7 to provide you with.

8 The last major part of the enforcement plan is the  
9 penalty payment mechanism. And in here, we have two primary  
10 issues that I see. The first issue centers on the penalty  
11 payment calc-- how the penalty payment calculation should be  
12 based.

13 As indicated in the opening statements, there are two  
14 proposals out there. BellSouth has what I call a  
15 transactions-based system, such that a penalty amount is assigned  
16 to each individual instance an ALEC customer receives  
17 discriminatory service. And total penalties are calculated by  
18 estimating the number of instances ALECs received inferior  
19 service and multiplying that times that basic penalty amount. I  
20 think, BellSouth called that a scalable penalty payment plan.

21 The ALEC coalition recommends the adoption of what's  
22 called or what I choose to call a measures-based plan in that for  
23 each of the enforcement measures that we adopt, there is an  
24 associated fixed penalty amount, such that should BellSouth fail  
25 to provide parity service for that measure, then that fixed

1 penalty amount is assessed to BellSouth.

2           Now, that's kind of a simplification of the overall two  
3 schemes. Both plans also, to some extent or another, account for  
4 the duration that discriminatory service may have gone on or  
5 perhaps the severity of the discriminatory service, but that is  
6 the fundamental difference between the two; one is  
7 transactions-based and one is measures-based, and we need to  
8 decide which one of those is appropriate.

9           The second and final major issue that I'm going to  
10 discuss, also in the penalty payment methodology part of the  
11 plan, is the appropriate specification of a total cap on  
12 BellSouth's liabilities under this plan. I guess, we need to  
13 decide whether or not a cap is even appropriate at all. And if  
14 so, if one is appropriate for adoption, should that cap be an  
15 absolute cap setting an absolute limit on the liability BellSouth  
16 would be subject to or should that cap be a procedural cap, in  
17 the sense that once penalties accumulate up to some preset amount  
18 during a 12-month period, BellSouth would then be required to  
19 come back to this Commission with a petition showing why it  
20 should not be held liable for any further penalties; that is,  
21 there's a procedural aspect to this that would be introduced to  
22 the procedural cap method.

23           Those are eight major issues, if my count was right,  
24 but now I want to draw attention to two specific provisions in my  
25 proposed enforcement plan. It also shows up in the ALEC plan, to

1 some extent, that I think will be very beneficial to us as a  
2 Commission in resolving these issues.

3 CHAIRMAN JACOBS: Mr. Stallcup, I don't want to rush  
4 you too far, but we are going a bit longer on the introduction,  
5 so you may want to --

6 THE WITNESS: I apologize for that, Commissioner, I  
7 really do. I'm almost done.

8 CHAIRMAN JACOBS: That's okay.

9 THE WITNESS: Okay. The first provision I want to call  
10 attention to calls for the adoption of a six-month review cycle  
11 to be established in the first two years of the enforcement  
12 plan's implementation. This review process allows the details of  
13 the plan to be revisited regularly and gives the Commission the  
14 opportunity to refine the plan in response to actual marketplace  
15 performance.

16 This provision should prove very useful in helping to  
17 ultimately resolve several major issues, such as establishing the  
18 value of delta, determining whether benchmarks and retail analogs  
19 are correctly set in setting appropriate penalty amounts, whether  
20 it be a transaction-based or measures-based, to get an effective  
21 incentive system constructed.

22 This six-month provision gives us the opportunity to go  
23 back and see how the plan that we approve here through this  
24 hearing process is actually performing and then to adjust it as  
25 needed. For some of the issues we're going to be asked to

1 resolve, particularly, things like parameter of delta, to a  
2 certain extent we may be shooting in the dark, because we don't  
3 have any real hands-on experience, no real hands-on data, with  
4 which to determine what the appropriate value is, but the  
5 six-month review process will give us that opportunity and,  
6 therefore, refine our original estimates.

7           The second specific provision I want to point out calls  
8 for the results of KPMG's third-party test to be incorporated  
9 into this plan. As part of this test, KPMG is conducting a  
10 review of BellSouth's entire set of SQMs and evaluating their  
11 adequacy for the use as a set of enforcement measures in the  
12 plan, like we're considering here. This review will include an  
13 assessment of the appropriate scope of the measures, how the  
14 measures should be defined, and what the appropriate benchmarks  
15 and retail analogs should be.

16           This provision of the plan allows us to use the results  
17 of KPMG's analysis of BellSouth's SQMs by an independent third  
18 party with some knowledge of the industry and enforcement plans.  
19 And their input into our determination of what constitutes an  
20 appropriate set of enforcement measures should be very beneficial  
21 to us to crafting an effective plan, and we'll be able to do that  
22 through the six-month review cycle.

23           In conclusion, of the eight major issues that I have  
24 listed, I think, these last two provisions I pointed out go a  
25 long way to solving four of them. They go a long way to solving

1 the statistical issue -- go a long way to solving three of them.  
2 One is a fallout. One of the statistical issues, I believe, is a  
3 fallout. The three that are resolved by these provisions are the  
4 appropriate specification of the enforcement measures. KPMG is  
5 going to give us that.

6           Setting the value of delta, well, we're going to have  
7 to come up with some value here at this hearing, but on a  
8 going-forward basis, we're going to be able to take a look and  
9 see how the enforcement plan is behaving. And if we, for  
10 example, see egregious levels of discriminatory behavior  
11 resulting in very minor penalty payments, one approach that we  
12 could take, in that case, would be to reduce the value of delta  
13 for those tests and thus make the test more sensitive.

14           The converse also works. If we see trivial amounts of  
15 discrimination resulting in burdensome penalties, we can use the  
16 value of delta as a fine-tuning knob and make the plan more  
17 appropriate. The other issue that, I think, is resolved by these  
18 two provisions is the appropriate selection of the benchmarks and  
19 analogs. That also will be handled by KPMG.

20           That leaves us with four big ones that I see: The  
21 legal issue, that I won't touch; the appropriate level of  
22 disaggregation, just in its own right, because it trickles  
23 downstream into the statistical properties; the type of penalty  
24 payment system to be used; and whether or not and what for the  
25 cap on remedy payments should be adopted.

1 Thank you.

2 MR. FUDGE: Chairman, the witness is tendered for  
3 cross.

4 CHAIRMAN JACOBS: Very well. Do we have a particular  
5 order? ALECs, I guess, we'll go down your line first and see if  
6 there are any -- is there any cross in yours?

7 MR. McGLOTHLIN: I have some cross, if you want me to  
8 go.

9 CHAIRMAN JACOBS: Okay. Proceed.

10 CROSS EXAMINATION

11 BY MR. McGLOTHLIN:

12 Q Mr. Stallcup, Joe McGlothlin for Z-Tel.

13 A Yes.

14 Q I have only several questions for you. The first  
15 question is a clarifying question. You indicated in your summary  
16 that, in your view, a decision on other aspects of the package in  
17 favor of BellSouth would have some sort of fallout-resolving  
18 effect on the choice of statistical approaches; do I understand  
19 that correctly?

20 A Yes.

21 Q Now, within the subject matter of choice of statistical  
22 approaches, there are some individual issues, such as whether  
23 there should be a floor on balancing critical value, such as the  
24 choice or the designation of the value of delta and such as the  
25 proposed delta factor included in Dr. Ford's testimony. You did

1 not intend to indicate that a choice in other aspects of the plan  
2 would resolve those specific issues, did you, sir?

3 A No, I did not. The entire set of issues resolving  
4 delta -- involving delta are independent of the other statistical  
5 tests that I indicated.

6 Q All right, sir. You state in your testimony and again  
7 in your summary that you take no position under the issues that  
8 are in the case. With respect to the strawman proposal, the  
9 strawman does include specific examples of the choices to be made  
10 in this case; am I correct?

11 A Yes.

12 Q And if I understand your testimony correctly, your  
13 statement that you take no position on any of the issues extends  
14 to the parameters and choices that were presented in the  
15 strawman; am I correct?

16 A That's correct.

17 Q Would it be fair to say that you perceive your role to  
18 be analogous to the referee who drops the puck on the ice and  
19 let's the parties go after it?

20 A I'll buy into that, yes.

21 Q Would you agree with me that economic theory would  
22 suggest that BellSouth has an incentive to maintain as large a  
23 market share as possible?

24 A Yes. I think, that would apply to all companies.

25 Q Would it follow that BellSouth would have a

1 disincentive to provide a quality of service to ALECs that would  
2 enable them to take market share from BellSouth?

3 A Yes, I think, that's a fundamental premise underlying  
4 an enforcement plan like this.

5 Q Several parties have advocated different values for the  
6 delta parameter that you describe in your testimony. Would you  
7 agree that the larger the value assigned to delta, the greater  
8 the discrepancy or the value of service that is assumed by the  
9 statistical test?

10 A You mean before the statistical test detects  
11 discriminatory behavior?

12 Q Yes.

13 A Yes.

14 Q Commissioner Jaber asked you a question about the  
15 definition of parity. I want to explore that concept with you a  
16 bit further. Within the performance assessment plan, would you  
17 agree that there is a basic division between those measures for  
18 services for which there is no retail analog and those for which  
19 there are retail analogs?

20 A Yes.

21 Q And focusing on those for which there is no retail  
22 analogs, we call those benchmarks; is that correct?

23 A That's correct.

24 Q Now, let's take a hypothetical illustration. Let's say  
25 the benchmark, the service for which there's no retail analog, is

1 90% within three days. In that situation, what is the level of  
2 service that BellSouth is expected to provide to the ALECs?

3 A It would be 90% within three days.

4 Q And there would be no occasion using a benchmark to  
5 assume any disparate level of service, would there, sir?

6 A No, not in the two proposed plans that we have before  
7 us. I think, both plans advocate the use of a bright-lining  
8 technique, if you will, which there's a direct nonstatistical  
9 comparison applied to measures which use benchmarks, such that if  
10 BellSouth performance does not live up to the benchmark, then  
11 statistical -- a direct comparison, arithmetic comparison, is  
12 made without statistical tools.

13 Q Let's take another hypothetical example. This time, a  
14 service does have a retail analog, but the universe of  
15 measurements is small, finite, and fully capable of being  
16 measured accurately.

17 So, let's say there's 10 measurements for the ALEC  
18 service and 10 for the ILEC and they're precisely known. In your  
19 view -- and let's say that the ILECs' average service or mean of  
20 service provided to the retail customers is five. In that  
21 context, what would be the appropriate standard that would be  
22 expected of the ILEC for service delivered to the ALECs?

23 A Well, the basic statistical standard that would be used  
24 would be a comparison of the means for the BellSouth-provided  
25 service and the ALEC-provided service. And you would

1 statistically compare those means to determine whether or not  
2 they were sufficiently distant from one another to judge that  
3 discriminatory service was provided.

4 Q Now, the witnesses speak in terms of Type 1 error and  
5 Type 2 error. Do I understand correctly that the source of such  
6 errors lies in the fact that samples are smaller than the  
7 universe of data and may not accurately portray the universe?

8 A Yes. That's where the notion of Type 1, Type 2 error  
9 comes from, the fact that we're reliant on a sample of the entire  
10 set of possible things from which we could be analyzing. And  
11 this Type 1 and Type 2 errors are the same things I talked about  
12 a little while ago, the risk to BellSouth making one kind of  
13 mistake versus the risk to the ALEC for making the other kind of  
14 mistake. Those Type 1, Type 2 errors are the two ways that reach  
15 an incorrect decision in a statistical test.

16 Q Now, in my hypothetical, understand that for both the  
17 ILECs' retail customers and the ALEC measurements, each sample is  
18 coextensive with the full universe and they are fully known. In  
19 that situation, would you agree with me that there is no  
20 opportunity for either Type 1 or Type 2 error?

21 A If that truly is the entire population, I would agree,  
22 you would not use statistics, but that situation would not exist  
23 in an enforcement plan like we're looking at here.

24 What we're going to be doing is evaluating the data,  
25 the transactions that occur, within any particular month. And

1 within any particular month you'll have particular customers  
2 being served in one month that may not be served in the  
3 subsequent month. And whoever happens to be receiving service  
4 from BellSouth in that particular time period is largely a  
5 function of random variation and chance.

6 Q Yes, sir.

7 A So, even though we see the data in its entirety, I  
8 would not conclude that that's the population, and I don't think  
9 that obviates need for a statistical test.

10 Q I'm not suggesting that we obviate the need for a  
11 statistical test. And the purpose of my question is very limited  
12 and has do with the definition of parity. With respect to the  
13 hypothetical that I've given you where the sample is coextensive  
14 with the universe and all measurements are precisely known, if  
15 there's no opportunity for Type 1 error or Type 2 error, if the  
16 mean or the service delivered to the ILECs' retail customers is  
17 five, what would be parity for the ALECs in that situation?

18 A Under the constraints of your presumption, it would  
19 also be five.

20 Q So, really, when the witnesses talk about such things  
21 as delta or identifying materiality or allowable discrepancy or  
22 the permissible amount of discrimination, that all derives from  
23 the phenomenon of trying to control Type 1 and Type 2 errors;  
24 isn't that right?

25 A Yes, sir.

1 Q I'm going to refer you to Page 13 of your prefiled  
2 testimony. And looking at the statements beginning at Line 7,  
3 you state: A typical statistical test for parity, e.g., a z-test  
4 that does -- and, I think, you intended that to be "not used"; is  
5 that correct, that does not use the balancing critical value?

6 A That's correct. I'm sorry for the omission.

7 Q "A typical statistical test for parity, e.g., a z-test  
8 that does not use the balancing critical value technique would  
9 base its conclusion on whether or not any observed disparity  
10 could simply be attributable to random chance alone.  
11 Incorporating the balancing critical value technique and its  
12 delta value into this evaluation means that in order to detect  
13 noncompliance, any observed disparity must not only be greater  
14 than what could occur by random chance alone, but also be large  
15 enough to threaten an ALEC's opportunity to compete. This issue  
16 addresses whether the inclusion of delta into the statistical  
17 evaluation process constitutes a refinement to the basic  
18 statistical test or a subversion of the test's original intent."  
19 By the test's original intent, do I understand you to mean a  
20 determination whether there is zero difference or not?

21 A Yes, typically known as the null hypothesis.

22 MR. MCGLOTHLIN: Those are all of my questions.

23 CHAIRMAN JACOBS: Mr. Prescott.

24 MR. PRESCOTT: Excuse me, I do have one question for  
25 clarification purposes. And I'm just asking, because I want to

1 make sure that the ALEC position was accurately captured.

2 CROSS EXAMINATION

3 BY MR. PRESCOTT:

4 Q Mr. Stallcup, when you were talking about the choice of  
5 the modified z test or the choice of the truncated z test, I  
6 think, you indicated that the ALEC coalition agreed that if the  
7 truncated z statistic was chosen that BellSouth's disaggregation  
8 was appropriate?

9 A The cause effect would be reversed. It's my  
10 understanding from the comments from the statistical experts that  
11 if the Commission should determine that BellSouth's method of  
12 disaggregating the enforcement measures is the appropriate one to  
13 use, then the test statistic proposed by BellSouth would also be  
14 the appropriate test statistic to use. Similarly, if the ALEC  
15 disaggregation scheme is adopted, then the ALEC test statistic  
16 would be appropriate.

17 MR. PRESCOTT: Okay. All right. I just wanted to  
18 clarify that. I will -- I'll address it with our witnesses,  
19 but --

20 CHAIRMAN JACOBS: Very well. If it's okay, I'd like to  
21 take a break for our court reporter to have a break here. We'll  
22 break for 10 minutes and come back.

23 (Recess taken.)

24 CHAIRMAN JACOBS: We'll go back on the record. We'll  
25 continue cross examination. Mr. Lackey.

1 MR. LACKEY: Thank you, Mr. Chairman.

2 CROSS EXAMINATION

3 BY MR. LACKEY:

4 Q Mr. Stallcup, my name is Doug Lackey. I'm one of the  
5 attorneys appearing on behalf of BellSouth.

6 I understood from your summary that you were saying  
7 that you were taking no position on any of the issues in this  
8 proceeding, but looking at Page 2 of your testimony, the purpose  
9 of your testimony was to prevent -- I'm sorry, to present a  
10 proposal for a performance assessment plan for BellSouth  
11 Telecommunications, Inc., correct?

12 A Yes.

13 Q And you do, in fact, present a plan that's your exhibit  
14 PWS-1, correct?

15 A That's correct.

16 Q And you represent on Page 2 that that plan is designed  
17 to help promote a competitive market environment for local  
18 exchange services in Florida, correct?

19 A Yes, as are all enforcement plans, a comment was made  
20 more generically.

21 Q Okay. And so, if we pull the plug on this proceeding  
22 right now, we all gave it up and went home, and the Commission  
23 adopted the plan that you attached to your testimony, the  
24 Commission would have adopted a plan designed to help promote a  
25 competitive marketplace for ALECs in Florida, correct?

1           A     Yes, in the sense that the proposed plan attached to my  
2 testimony contains all the necessary components and parts needed  
3 to implement a plan.

4           Q     Now, your plan was patterned after a similar plan that  
5 was adopted by the Georgia Public Service Commission, correct?

6           A     That's correct.

7           Q     And that was done after a proceeding somewhat like this  
8 one; is that correct?

9           A     That's correct.

10          Q     And you've modified the plan to include some of the  
11 measurements that the Commission put in the third-party KPMG  
12 testing plan; is that correct?

13          A     Yes, that's correct. We substituted third-party test  
14 metrics for those in the Georgia plan as under the presumption  
15 that's a reasonable point of beginning for our discussions.

16          Q     Okay. Now, your plan attached to your testimony, I  
17 believe, you said had 57 measures in it; is that correct?

18          A     I believe, that's correct.

19          Q     Now, you also have a penalty plan as part of your  
20 exhibit; is that correct?

21          A     That's correct.

22          Q     And I understand that you believe or agree that,  
23 generally, it's appropriate for the penalty plan to have fewer  
24 measurements in it than the service quality plan, correct?

25          That's on Page 7 of your testimony, Line --

1           A     I don't know if I necessarily believe that. What was  
2 indicated in my testimony is that there is a difference between  
3 the overall set of service quality measures that were adopted for  
4 the purposes of the third-party test and a set of enforcement  
5 measures, which is a subset of the overall set of SQMs I identify  
6 as enforcement measures in my exhibit.

7           Q     I perhaps worded my question poorly. I was looking at  
8 Page 7, Line 10, of your testimony where you say, if I understand  
9 correctly, "The enforcement measures specified in the proposed  
10 plan are a subset of the SQMs." That's what I meant to ask you.  
11 Your performance measurements are a subset of the overall  
12 measurements you propose?

13          A     Yes, that's correct.

14          Q     Okay. And at least one of the reasons that you've done  
15 that is because you recognized that some measures may be  
16 correlated; is that correct?

17          A     No, not necessarily. Wishing not to sound like I'm  
18 taking a position on one of the issues in the case, I recognize  
19 that there are some measures that are worth looking at and  
20 obtaining data for that maybe you don't necessarily want to go  
21 ahead and attach penalties to. These kinds of measures I look at  
22 upon as being diagnostic tools that we can use to keep track of  
23 different parts of BellSouth's OSS system so that we can identify  
24 problems coming down the road.

25                 So, in that sense of the entire universe of possible

1 measures that may be out there for us to consider, we don't  
2 necessarily want to have penalties attached to every one of them.  
3 We want to have the freedom to specify measures that we can use  
4 diagnostically, rather than a means to provide an incentive.

5 Q Well, you also want to eliminate measures that would  
6 result in simultaneous failures for multiple measures to avoid  
7 preventing multiple remedy payments resulting from a single case  
8 of noncompliance, correct?

9 A Yes, that is an issue in this case whether or not it's  
10 appropriate to do that. I mention that in my testimony as being  
11 illustrative of how it is you might select a subset of the  
12 overall SQMs for enforcement purposes.

13 Q Well, for instance, if there were a measure for held  
14 orders, failing that measure; that is, holding an order too long,  
15 would also implicate measures such as order completion interval  
16 and total service order completion interval, wouldn't it?

17 A Yes, it would.

18 Q And so, if you had a failure on the mean held orders,  
19 you would also expect to have a failure on the other two  
20 measurements, correct?

21 A Yes.

22 Q And that's what you understood me to mean when I used  
23 the word correlated?

24 A Yes.

25 Q Okay. And one of the things that you agree is

1 appropriate to avoid is not paying three penalties for that one  
2 failure, if I understand correctly; is that right?

3 A I think, that is a consideration that needs to be  
4 evaluated in this hearing, yes.

5 Q Okay. Now, you mentioned in your testimony that the  
6 ALECs use something called a modified z statistic in their plan  
7 while BellSouth uses a truncated z, correct?

8 A Yes.

9 Q It is correct, isn't it, that BellSouth begins its  
10 analysis with a modified z statistic?

11 A Yes.

12 Q Okay. And the modified z statistic is used in both  
13 plans at what we call the cell level; is that correct?

14 A Yes, that's correct, where the cell is the point of  
15 like-to-like comparison coming out of the disaggregation scheme.

16 Q And the truncated z statistic is then used when you  
17 aggregate some of those cells together; is that correct?

18 A That's right.

19 Q And if the Commission decides that it's appropriate to  
20 aggregate those cells together, you don't have any problem with  
21 the way BellSouth used the truncated z statistic, do you?

22 A Me, personally?

23 Q Yes.

24 A No.

25 Q Okay. And if the Commission decides not to aggregate

1 those cells, then the way the ALECs use the modified z statistic,  
2 I take it, is correct, in your opinion?

3 A Yes.

4 Q Okay. Now, I said in my opening that statistics would  
5 try our patience, and I think I'm probably right, but let me ask  
6 you a couple more questions about it. Delta isn't actually a  
7 statistical term or measure, is it?

8 A No, not really, even though it is used within the  
9 context of a statistical test.

10 Q And so the statisticians, all four of them or however  
11 many we have, can't tell us what the right delta is to use in  
12 this case, correct?

13 A That's correct.

14 Q That's a business decision that's going to have to be  
15 made by somebody who knows something about telephony, correct?

16 A Yes.

17 Q All right. Now, let's see how it would work, and I  
18 want to give you an example, too. And I'm not a statistician, so  
19 if I mess my example up, please stop me. I want you to assume  
20 that BellSouth has an order completion interval for some product  
21 of three days. And I want you to assume that the order  
22 completion interval for the same product for the ALECs is two and  
23 a half days. Are we through?

24 A Yes.

25 Q Okay. So, as long as we're providing better service to

1 the ALECs, we don't need to worry about it, right?

2 A Correct.

3 Q Now, let's assume that instead of two and a half days  
4 we're providing order completion intervals of three and a half  
5 days to the ALECs. Now we've got a question, don't we?

6 A Yes.

7 Q Now, it is possible, first of all, that you can run a  
8 statistical analysis and find that that difference of a half a  
9 day was statistically significant, correct?

10 A That is possible.

11 Q Okay. And you could make such a determination with or  
12 without -- well, you could make such a determination without  
13 knowing anything about delta, without using delta in the  
14 calculation, correct?

15 A That's correct. Delta is an option, if you will, the  
16 balancing critical value is an optional technique to be employed.  
17 It doesn't have to be used.

18 Q Now, is the difference between three and three and a  
19 half days, in my example, material?

20 A Material in the sense of affecting an ALEC's  
21 opportunity to compete?

22 Q Yes.

23 A I couldn't answer that question. I'm not an expert in  
24 the field.

25 Q Good. So, the difference that I've just described of

1 three and three and a half days could be statistically different,  
2 but without some delta, without some indication of materiality,  
3 you don't know whether it really makes a difference in the ALECs'  
4 ability to compete; is that correct?

5 A That's correct.

6 Q And that's really what the selection of delta does,  
7 isn't it?

8 A It does have materiality -- it does introduce a notion  
9 of materiality into the statistical consideration, that is  
10 correct.

11 Q And, for instance, if we didn't have a delta but the  
12 Commission were called upon to look at the scenario I just gave  
13 you, three days versus three and a half days, they could conclude  
14 that even though it was statistically different, it wasn't  
15 material. It didn't make any difference in the ALECs' ability to  
16 compete, couldn't they?

17 A That is true.

18 CHAIRMAN JACOBS: What would we base that on?

19 THE WITNESS: The materiality?

20 CHAIRMAN JACOBS: If we were to reach a conclusion that  
21 that difference were not material, what threshold, what criteria  
22 would you look to, to determine that?

23 THE WITNESS: I think, the issue of materiality has to  
24 be determined by someone who is an expert in the industry. For  
25 example, with order completion intervals, someone with some

1 experience of how customers react to know if a half-day  
2 difference is really customer-impacting and might cause a  
3 customer to think that doing business with a CLEC is somehow  
4 inferior to doing business with BellSouth. That's not a  
5 statistical judgment that I could help you with.

6 CHAIRMAN JACOBS: Thank you.

7 BY MR. LACKEY:

8 Q Let me see if I can help with that one, Mr. Stallcup.  
9 Let me add to my example. Let me ask you to assume that the  
10 standard deviation of my example, three days for the -- for  
11 BellSouth is one day. The mean is three days, the standard  
12 deviation is one day. If I understand correctly, that means that  
13 68% of the services BellSouth provides to itself falls between  
14 two days and four days; is that correct?

15 A Yes, roughly speaking.

16 Q All right. Now, if we used a delta of .25, does that  
17 mean that the application of that formula would mean that any  
18 mean -- I'm using too many means -- does that indicate that a  
19 mean of three days and six hours would be a material difference  
20 between the service provided to the BellSouth customer and the  
21 service provided to the ALEC customer? And I simply took a  
22 quarter times the standard deviation.

23 A I understand that. Yes. And that is how delta is  
24 determined. It is a function of the standard deviation, the  
25 average rate of which BellSouth's service varies. And yes, the

1 arithmetic does follow, but I would caution you that I think  
2 there may be two different relationships being offered by the  
3 experts as to what the appropriate relationship is between delta  
4 and the standard deviation.

5 Q I understand. The experts have a dispute about what  
6 you multiply times what, but I just want --

7 A Yeah, one is divided by two and one is not. And I have  
8 not resolved that issue to know if your example would necessarily  
9 be correct.

10 Q Well, if my example -- well, I didn't divide the delta  
11 by two. I was using that formula, correct?

12 A Maybe if you give me the example again, I can be more  
13 helpful.

14 Q Sure. I asked you to assume that the delta that the  
15 Commission approve was the ALEC delta of .25. And I understood  
16 that the discrepancy with them being multiplying .25 times the  
17 standard deviation of one day --

18 A Yes.

19 Q -- if the gap which, in my case, I believe, is six  
20 hours.

21 A Yes.

22 Q So, that's the ALEC scenario I just painted, correct?

23 A Okay, yes, I'll accept that.

24 Q Okay. And if the BellSouth scenario were used and a  
25 delta of one was used, the BellSouth formula divides delta by one

1 -- by half, correct?

2 A I believe, that's the case.

3 Q And so the difference for the BellSouth calculation in  
4 this little hypothetical would be 12 hours, correct?

5 A Yes.

6 Q So, the difference between a delta of a quarter and a  
7 delta of one, in my example, yields a difference in the spread of  
8 six hours, correct?

9 A Yes.

10 Q Okay. And again, the whole purpose of that is simply  
11 to determine whether six hours or 12 hours is material or not,  
12 correct?

13 A It is -- the whole point behind that is to determine  
14 how far away the service provided to the ALECs relative to that  
15 provided to BellSouth customers, how far away you have to be  
16 before you want your statistical test to signal discriminatory  
17 behavior.

18 Q Actually, to indicate when a penalty is due, I guess?

19 A Once the discriminatory behavior is detected, then  
20 penalties follow, yes.

21 Q Now, let's talk about the ALEC plan. Have you looked  
22 at the ALEC plan?

23 A Yes, I have.

24 Q Okay. And you either attended or read the depositions  
25 of the ALEC witnesses?

1 A Yes, the majority of them.

2 Q Okay. And you know that -- you've read Mr. Coon's  
3 testimony, I take it?

4 A Yes, I have.

5 Q And you know that Mr. Coon represents that the  
6 BellSouth plan has 1,200 submetrics, correct?

7 A Roughly speaking, I think, that's a close number.

8 Q Okay. And the plan that was attached to your testimony  
9 would have something less than 1,200 metrics, I suppose?

10 A I believe so, but actually I haven't calculated it, so  
11 I couldn't say for sure.

12 Q All right. Did you hear Ms. Bursh testify at her  
13 deposition that she thought their plan had 10,000 measurements?

14 A Yes, I did.

15 Q Did you hear Ms. Kinard say she didn't know how many  
16 their plan had?

17 A I didn't attend Ms. Kinard's deposition.

18 Q I'm sorry, you read it?

19 A I did not attend her deposition.

20 Q Did you read it?

21 A No, I haven't.

22 Q Strike that, I'm sorry.

23 Have you read Mr. Coon's testimony where he opined that  
24 there were, perhaps 75,000 measures in the ALEC's plan?

25 A Yes, I recall that in Mr. Coon's testimony.

1 Q Okay. Do you know whether, if the Commission adopts  
2 the ALEC plan, there is any database or computer program  
3 available that would allow the collection and reporting of 75,000  
4 different measurements?

5 A Not that I'm aware of.

6 Q Could you handle 75,000 different measurements for  
7 however many ALECs there are manually?

8 MR. FUDGE: Commissioners, I object. I believe, we're  
9 going beyond the scope of Mr. Stallcup's testimony that he  
10 prefiled. This is all stuff that has occurred since his  
11 testimony.

12 CHAIRMAN JACOBS: Say again, the last part?

13 MR. FUDGE: This is all things that have occurred since  
14 the filing of his testimony, and he hasn't filed any testimony on  
15 this.

16 MR. LACKEY: I'm sorry. I don't believe I'm limited to  
17 the scope of his Direct as long as the questions are reasonably  
18 related to his testimony.

19 CHAIRMAN JACOBS: He did qualify his questioning as to  
20 whether or not he'd reviewed that. As to the subject matter, it  
21 is my understanding that in your Direct you did deal with the  
22 disaggregation issue, correct?

23 THE WITNESS: Yes.

24 CHAIRMAN JACOBS: And, as I understand, your  
25 questioning goes to whether or not a particular level of

1 disaggregation is reasonable or not.

2 MR. LACKEY: I believe, it touches on that, and you're  
3 right, that was in his testimony.

4 CHAIRMAN JACOBS: To the extent that it deals with  
5 generically disaggregation and not specifically to the details of  
6 a proposal, then I'll allow the question.

7 MR. LACKEY: Thank you.

8 BY MR. LACKEY:

9 Q I think, the question I asked when the objection was  
10 made was whether you had an opinion about whether 75,000  
11 measures for however many ALECs there are could be handled  
12 manually?

13 A Manually?

14 Q Yes.

15 A No, I don't think it could be handled manually well at  
16 all.

17 Q Do you have any idea how the Commission Staff would  
18 handle reviewing and evaluating a report that had 75,000 measures  
19 in it?

20 A The same way they would handle 1,100 measures. They  
21 would wait for -- the way I would envision it occurring is that  
22 the Staff would not actively review the data on an ongoing basis,  
23 but would rely on the parties to look out for their own best  
24 interests. And should a dispute arise, other than the way the  
25 data is calculated or perhaps the way that it's used, they could

1 bring that to the Commission for resolution.

2 Q Do you have -- you've already said that you're not  
3 aware of any database or program that would allow the handling of  
4 this. Do you have any idea how long it would develop -- take to  
5 develop such a database in a computer program to handle that  
6 number of measures? And if you don't know, that's fine.

7 A Yes, but let me -- to correct something, perhaps, I  
8 potentially misspoke of earlier when you asked me the question am  
9 I aware of any computer program or database that could handle  
10 that many submeasures, what would be envisioned should the  
11 ALECs' disaggregation plan be adopted is that BellSouth's PMAP  
12 system, or whatever computer program they're currently using for  
13 these kinds of calculations would necessarily have to be modified  
14 to reflect whatever decision we reach here in terms of  
15 disaggregation or any other aspect of the plan. So, to that  
16 extent, yes, I do know of a program that would have to be  
17 modified to handle that situation, but currently it is not  
18 designed to do that.

19 Q Do you happen to know whether PMAP is currently at or  
20 near its capacity?

21 A I don't know.

22 Q Okay. Do you happen to know how long it would take to  
23 modify the PMAP program to take into account the number of  
24 measures we're talking about?

25 A No, I don't.

1 Q Okay. You mentioned in your testimony that there were  
2 two additional factors that you thought the ALECs would think  
3 were important, six-month reviews and the incorporation of the  
4 KPMG result; is that correct?

5 A Yes.

6 Q Hasn't BellSouth agreed, as a part of its plan, to have  
7 six-month reviews of these items every six months for the next  
8 two years?

9 A Yes, they have.

10 Q And hasn't BellSouth already agreed to include any KPMG  
11 results in this performance plan when that's --

12 A Yes, they have.

13 Q So, we're not objecting to either of those last two  
14 suggestions you made; is that correct?

15 A That's correct.

16 MR. LACKEY: That's all I have, Mr. Chairman, thank  
17 you.

18 CHAIRMAN JACOBS: Commissioners, any questions?

19 COMMISSIONER JABER: Mr. Stallcup, remember the  
20 question I asked you during the summary, and then Mr. McGlothlin  
21 followed up with a hypothetical that was supposed to clarify my  
22 question?

23 THE WITNESS: Yes.

24 COMMISSIONER JABER: What was I supposed to  
25 understand from that?

1 THE WITNESS: Could you try the question on me again?  
2 I've been fielding so many, I'm not sure I can remember it that  
3 well.

4 COMMISSIONER JABER: I asked you if your definition of  
5 delta was similar to saying that, you know, if there wasn't  
6 parity you'd have a delta, basically? As I understand it, your  
7 definition of delta was the level of service BellSouth provides  
8 to itself versus the level of service that it would provide an  
9 ALEC.

10 THE WITNESS: Yes, as an input assumption what that  
11 difference has to be.

12 COMMISSIONER JABER: Right. And I asked you whether,  
13 said differently, if that was is BellSouth providing service to  
14 an ALEC at parity? And you made a distinction for me. And what  
15 was that distinction?

16 THE WITNESS: Okay, here's the distinction: A basic  
17 statistical test, without inclusion of the balancing critical  
18 value technique consideration of delta and all that stuff, a  
19 basic statistical test evaluates whether or not there is any  
20 statistically significant difference between the level of service  
21 BellSouth gives to itself and the level of service that the ALECs  
22 receive.

23 When you state that hypothesis, if you will, that  
24 you're testing, you're testing it, there's a zero difference  
25 between what BellSouth gets and what the ALECs get; that is,

1 you're testing parity. There's no difference in service.

2 You're willing to accept, however, because of the  
3 occurrence of random chance alone that the actual data you're  
4 going to see can be somewhat different. You can expect to see,  
5 due to pure random chance alone, some of the time ALECs get  
6 inferior service, but it's not systematic, it's not somehow built  
7 into BellSouth's system, it just occurs.

8 And there's a feeling that, well, yeah, we can put up  
9 with this random chance alone causation for any difference and  
10 still judge that yes, we're observing parity, it's just random  
11 chance that causes the difference. And that's what a standard  
12 statistical test would do.

13 COMMISSIONER JABER: If there is a statistical  
14 difference, such that you know there's discriminatory behavior,  
15 then by definition you're not at parity; is that correct?

16 THE WITNESS: That is what you would conclude, yes.

17 COMMISSIONER JABER: Okay. Now, Mr. McGlothlin's  
18 hypothetical took you to the differences between Tier1 errors and  
19 Tier 2 errors --

20 THE WITNESS: Type 1 and Type 2 errors, Commissioner.

21 COMMISSIONER JABER: Thank you. What was I supposed  
22 to understand from that?

23 THE WITNESS: Type 1 error is the kind of error that  
24 you control for, if you will, a standard statistical test. And  
25 it's I'm 95% confident that we don't have parity. Type1 errors,

1 the remaining 5% that we have out there, because that's one way  
2 to make a mistake, that would be judging that BellSouth is not  
3 providing parity service when, in fact, it is.

4           Type 2 error is the other kind of way to make a mistake  
5 and that would be judging BellSouth as providing parity service  
6 when, in fact, it's not. That's not typically controlled for in  
7 the standard statistical test. If we want to control for that  
8 kind of error and make our enforcement plan balanced and equally  
9 injurious to both parties, if you will, we need to control for  
10 both types of error. And that's where the notion of introducing  
11 the balancing critical value technique comes in and necessitates  
12 the discussion of delta. You can't balance the errors, if you  
13 don't have a delta.

14           COMMISSIONER JABER: Thank you.

15           CHAIRMAN JACOBS: I'm concerned in the debate  
16 comparing the modified z to the alternative process. The concern  
17 was raised that because of the way you do the disaggregation, I  
18 believe, you can mask a higher level of disparate service because  
19 of the way you do the -- I believe, it's the aggregation.

20           THE WITNESS: Yes.

21           CHAIRMAN JACOBS: Would you walk me through how that  
22 happens?

23           THE WITNESS: How that happens? Yes.

24           CHAIRMAN JACOBS: Potentially.

25           THE WITNESS: Yeah, we're not saying that it occurs,

1 but it is an issue that we probably need to think about. And  
2 this notion of masking occurs when we -- should we adopt the  
3 BellSouth scheme for disaggregation and then, therefore,  
4 follow-up using the BellSouth test statistic.

5           What occurs is that for some enforcement measure, we  
6 break the transactions for that measure down into things called  
7 submeasures. And these are the product groupings I talked about  
8 earlier, groupings of similar products.

9           For each one of those subgroupings, you break that data  
10 down further by geographic reason, perhaps time of day, or any  
11 other thing that you think might cause a systematic difference in  
12 the service that ALECs get and BellSouth gets so that what you  
13 get in that breakdown is a real guarantee that you're comparing  
14 like-to-like things.

15           CHAIRMAN JACOBS: So, you're trying to identify what  
16 the most salient variables are.

17           THE WITNESS: Yes, that's correct. We're trying to get  
18 rid of any kind of reason to explain why there might be disparate  
19 service, other than perhaps discriminatory behavior.

20           CHAIRMAN JACOBS: Okay.

21           THE WITNESS: So, we've got a submeasure here that  
22 we've broken down into these finer degrees of detail. At each  
23 one of those finer degrees of detail, we apply the modified z  
24 test. We statistically determine whether or not we see  
25 discriminatory behavior.

1           What then happens in BellSouth's methodology is you've  
2 got all these z tests, if you will, for each one of those levels  
3 of, you know, detail. We then add them back up to get back up to  
4 that subproduct or submeasured level. And it's in that process  
5 of adding these z-scores back up that the potential for masking  
6 comes in. Imagine, if you will, that we have four or five levels  
7 of detail and four or five z-scores we're going to add up. When  
8 we do that adding, we weight each one of those z-scores by how  
9 many transactions occurred within each one of those levels of  
10 detail.

11           So, a very large or a level of detail with a lot of  
12 transactions would carry more weight in the aggregation process  
13 than one with fewer transactions. So, if disparate service  
14 existed in one of those levels of detail that had very few  
15 transactions, it might not necessarily be carried up to the  
16 submeasured level during the reaggregation process.

17           CHAIRMAN JACOBS: Okay.

18           THE WITNESS: And that is where that comes into play.

19           CHAIRMAN JACOBS: And the first thought that hits me is  
20 that maybe -- the fact that there are few transactions in that  
21 subsale or that sale, rather, that the fact that there is just  
22 retreatment may not rise to the level of materiality; is that a  
23 fair statement, the fact that few ALECs are engaging in that  
24 transaction does that mean that it's no less material or is more  
25 or less material, the fact that there are fewer transactions

1 there?

2 THE WITNESS: I wouldn't necessarily conclude that at  
3 all. It could well be that if one of these levels of detail is a  
4 particular geographic region that an ALEC is just beginning to  
5 compete in that area and, therefore, has very few transactions.  
6 And I wouldn't necessarily associate that with something being  
7 immaterial.

8 CHAIRMAN JACOBS: Okay. Now -- and I'm confused on  
9 this point. Does that translate into the remedy part as well?  
10 I'll be honest, I lost that connection. And I was trying to find  
11 out whether or not, if the fact that you then come up -- I assume  
12 once you add all these back up, you come up with a number,  
13 whether that number be more accurate or less accurate, how does  
14 that then translate into the remedy that you impose?

15 Because, I think, I understand the first part of that  
16 discussion. The first part of the discussion you may not get to  
17 a remedy as many times as you'd like, okay, because you didn't  
18 reach that threshold because you weighted some of these lower  
19 transaction sales lesser than some of the others.

20 THE WITNESS: Yes.

21 CHAIRMAN JACOBS: So, I understand the fact that you  
22 may not get to that remedy threshold --

23 THE WITNESS: For that particular level of detail, yes.

24 CHAIRMAN JACOBS: -- as frequently as one might an  
25 alternative analysis might do, but let's assume that we get

1 there, we get to a remedy level. Is there differences -- are  
2 there differences, then, in what remedies might apply because we  
3 did the modified z or the other?

4 THE WITNESS: Yes. The way the two penalty systems  
5 work are a direct reflection of the level of detail at which you  
6 evaluate compliance. Under the BellSouth system, penalties are  
7 assessed on the submeasure level; that is, after you aggregate up  
8 all of the individual evaluations, you reach a conclusion at the  
9 submeasure level, and then penalties are assigned from that  
10 basis.

11 CHAIRMAN JACOBS: So, the weighting would have an  
12 effect there as well.

13 THE WITNESS: Yes, sir.

14 CHAIRMAN JACOBS: Okay.

15 THE WITNESS: Under the ALEC plan, at each level of  
16 detail where you do the evaluation, it's at that point penalty  
17 calculations would follow such that if one of these detailed  
18 levels showed discriminatory behavior, that would translate  
19 directly into penalty payments.

20 CHAIRMAN JACOBS: Okay. Thank you. That helps. No  
21 further cross?

22 COMMISSIONER BAEZ: I have a couple questions. I want  
23 to go back to baby steps here. When you're using retail analogs,  
24 that's where you have delta.

25 THE WITNESS: That's correct, sir.

1           COMMISSIONER BAEZ: When you're using benchmarks,  
2 and, I think, Mr. McGlothlin kind of led you down into some  
3 philosophical discussion as to whether you -- you know, what you  
4 believe parity to be or the intent of the Act.

5           THE WITNESS: Yes.

6           COMMISSIONER BAEZ: How would you characterize the  
7 relationship with benchmarking and bright-lining, as you called  
8 it, to whether there's parity or not? And I guess -- I don't  
9 want to mix terms here, but if you're using a benchmark less than  
10 100%, is that sort of the same thinking of there has to be some  
11 level of imperfection, if you will, same as you're recognizing it  
12 when you're using delta in an analog situation?

13          THE WITNESS: No, sir, they're different ideas. First  
14 of all, let me preface that by saying the ideal standard to use  
15 is a retail analog, because what you want to do, if we're looking  
16 for parity, is you want BellSouth to treat the ALECs the same way  
17 they treat themselves. And the best way to do that is find  
18 comparable BellSouth measures. That's the prime choice.

19                 If you can't find something that's comparable, for  
20 example, provide an ALEC with collocation services, for example,  
21 maybe you've got to use a benchmark there, because BellSouth  
22 doesn't collocate, you know, on their own. Let me say that  
23 differently. There are some measures for which you cannot  
24 identify an appropriate retail analog.

25                 The second best solution is to set a benchmark for

1 those measures where you struggle to find a level of service that  
2 somehow is reflective of what BellSouth provides to itself but  
3 also provides ALECs with a reasonable opportunity to compete.  
4 It's a second best solution. You'd prefer the retail analog, but  
5 you go along with the benchmark simply because you have no  
6 choice.

7           Now, the fact that we set benchmarks to less than 100%  
8 does recognize the fact that whatever standard we set for  
9 BellSouth behavior, there are going to be some extenuating  
10 circumstances some of the time, and perhaps that is analogous to  
11 the random chance notion of statistical theory, but it's simply  
12 an admission that it would not be prudent to require absolute  
13 perfection out of BellSouth. But that is not the same thing as  
14 saying parity of service. It's simply saying a different  
15 standard for BellSouth behavior, other than parity, because we  
16 don't know how to set parity considerations for measures without  
17 retail analogs or benchmarks.

18           COMMISSIONER BAEZ: Do you know off-hand what the  
19 percentage -- and I know that we have competing numbers of  
20 measures --

21           THE WITNESS: Yes.

22           COMMISSIONER BAEZ: -- but generally speaking, what the  
23 percentage of measures that would need -- that would use an  
24 analog to measures -- you know, what percentage of the measures  
25 uses an analog?

1 THE WITNESS: Yeah, I understand the question, and I'm  
2 trying to think back to what's in the proposal. And I'm guessing  
3 about a half to two-thirds use retail analogs and the remainder  
4 uses benchmarks. I think, that's in the ballpark. And I'm  
5 gazing across the way at Lisa Harvey over there, because I'm sure  
6 she knows the answer and I don't, but I think she agrees that I'm  
7 somewhat close.

8 COMMISSIONER BAEZ: That's it. Thank you.

9 CHAIRMAN JACOBS: Very well. Redirect.

10 REDIRECT EXAMINATION

11 BY MR. FUDGE:

12 Q Mr. Stallcup, is it appropriate to employ a sample  
13 benchmark adjustment table to account for random variation when  
14 evaluating compliance for small samples?

15 A Yes.

16 Q Earlier you stated that you are familiar with both of  
17 the competing plans; is that correct?

18 A Yes.

19 Q To what extent do you believe that the components of  
20 those plans are interchangeable?

21 A As I indicated before, I think, we do have some  
22 constraints placed on us about the interchangeability of the  
23 different parts that the plans propose. As I indicated before,  
24 we've got four big parts here, you know, the tier structure  
25 enforcement measures and so forth and different subparts, if you

1 will, within each one of those four.

2           And when I wrote my testimony and offered the proposed  
3 plan, I did so with the hope that this Commission could see what  
4 a proposed -- what an enforcement plan is supposed to consist of,  
5 and then pick and choose the best parts of the two competing  
6 plans that would be most suitable for use in Florida for  
7 BellSouth. And to a certain extent, I think, this Commission  
8 does have latitude to do that.

9           There are certain constraints that I've mentioned  
10 earlier about disaggregation necessarily affecting the  
11 statistical evaluations, but independent of those, I think, there  
12 are several ways that we could recombine the component parts,  
13 that you should feel free to recombine the component parts to  
14 pick the best ideas being offered.

15           For example, you may choose to -- you may decide that  
16 you think the relatively focused enforcement measures selection  
17 of BellSouth is appropriate, but you also prefer the  
18 disaggregation scheme advanced by the ALECs.

19           So, then, that overall body of enforcement measure  
20 issues, you can pick some stuff from BellSouth and some stuff  
21 from the ALECs to fashion a plan in Florida that would be most  
22 effective for our purposes. So, I think, it is appropriate to at  
23 least consider the likelihood of picking the best parts of each  
24 plan to fashion our final decision.

25           MR. FUDGE: Thank you, Mr. Stallcup. We have no

1 further questions.

2 CHAIRMAN JACOBS: Exhibits?

3 MR. FUDGE: We'd like to move Exhibit 13 into the  
4 record.

5 CHAIRMAN JACOBS: Without objection, show Exhibit 13 is  
6 admitted into the record.

7 (Exhibit 13 admitted into the record.)

8 CHAIRMAN JACOBS: Thank you. You're excused,  
9 Mr. Stallcup.

10 THE WITNESS: Thank you.

11 CHAIRMAN JACOBS: Next witness.

12 KAREN KINARD

13 was called as a witness on behalf of Worldcom, Inc. and, after  
14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. McNULTY:

17 Q Good afternoon. I'm Donna McNulty. Please state your  
18 name and business address.

19 A My name is Karen Kinard, and my business address is  
20 8521 Leesburg Pike, Vienna, Virginia.

21 Q By whom are you employed and in what capacity?

22 A I work for Worldcom, and I'm with their National  
23 Carrier Management and Initiatives Group and I specialize in ILEC  
24 performance advocacy.

25 Q Have you prefiled Direct testimony in this docket

1 consisting of 42 pages?

2 A Yes, I have.

3 Q Do you have any changes or corrections to make to that  
4 testimony?

5 A No, I do not.

6 Q Have you also prefiled Rebuttal testimony in this  
7 docket consisting of 12 pages?

8 A Yes, I have.

9 Q Do you have any changes or corrections you would like  
10 to make to the Rebuttal testimony?

11 A No, I do not.

12 Q If I were to ask you those same questions today, would  
13 your answers be the same?

14 A Yes, they would.

15 MS. McNULTY: At this time, I would like to ask that  
16 the Direct and Rebuttal testimony of Ms. Karen Kinard be inserted  
17 into the record as though read.

18 CHAIRMAN JACOBS: Without objection, show the Direct  
19 and Rebuttal testimony of Ms. Kinard entered into the record as  
20 though read.

21

22

23

24

25

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

2 A. My name is Karen Kinard. My business address is 8521 Leesburg Pike, Vienna,  
3 Virginia 22182. I am employed by WorldCom, Inc. as a Senior Staff Member  
4 within the ILEC Performance Advocacy group of WorldCom's National Carrier  
5 Policy and Planning organization.

6 **Q. PLEASE PROVIDE INFORMATION ON YOUR BACKGROUND AND**  
7 **EXPERIENCE.**

8  
9 A. I am responsible for performance measurement and remedy plan policy  
10 development and advocacy for WorldCom, and I was a key developer of the  
11 Local Competition Users' Group's (LCUG's) version 7 Service Quality  
12 Measurement document. I have held various positions since joining WorldCom's  
13 (then MCI's) Local Initiatives group in June 1996, including leading a team that  
14 provided subject matter expertise during the first round of interconnection  
15 agreement negotiations.

16 Before joining WorldCom, I was an editor for eleven years at  
17 Telecommunications Reports ("TR"), covering technology, state regulation,  
18 access charge issues, and jurisdictional cost separations policy. I also held the  
19 position of chief technology editor and other top editorial positions, including  
20 serving as the principal editor of TR's Communications Business and Finance and  
21 Cable-Telco Competition Report newsletters. I initiated TR's Communications  
22 Billing Report newsletter before joining Phillips Business International's  
23 Communications Today daily electronic newsletter in 1995 as its chief FCC  
24 correspondent. From 1976 to 1984, I served in various positions as an aide to the

1 Congressman for the Seventh District of Pennsylvania, including Press Secretary  
2 and Legislative Assistant for telecommunications policy and banking.

3 I received my Masters of Science degree in Telecommunications Policy  
4 and Management from George Washington University in 1984. I received a  
5 Bachelors of Science degree in Communications from West Chester University in  
6 1975. I also hold a paralegal certificate in Corporate Law from Widener  
7 University.

8 **Q. WHAT IS YOUR EXPERIENCE IN PERFORMANCE MEASUREMENTS**  
9 **WORK IN OTHER JURISDICTIONS?**

10  
11 A. In addition to participation in several metric sessions with Florida staff last year, I  
12 have been WorldCom's lead representative in carrier-to-carrier performance  
13 measurement and remedy collaboratives, have made metric presentations, and  
14 have testified or filed comments in many state proceedings since 1998. State  
15 proceedings in which I have participated include those held in North Carolina,  
16 Louisiana, Tennessee, New York, Pennsylvania, Massachusetts, New Jersey,  
17 Virginia, Maryland, Illinois, Michigan, Ohio, Indiana and Arizona. I also have  
18 filed declarations with the FCC on metric and remedy issues in the New York and  
19 Massachusetts 271 proceedings, and I have made presentations and informally  
20 discussed metrics and remedy issues with FCC and Department of Justice staff at  
21 their request and in ex partes, either done jointly with other LCUG members or  
22 solely for WorldCom.

23 **Q. WILL THE ALECs' PROPOSED METRIC ADDITIONS AND**  
24 **IMPROVEMENTS HELP ALECS AS LOCAL COMPETITORS IN**  
25 **FLORIDA?**  
26

1 A. Yes. Along with better pricing and improved OSS functionality, enhanced  
2 performance measurements, standards and remedies will be critical factors in  
3 enabling ALECs to enter the Florida local market, particularly the residential  
4 market. Many of the metric revisions and new metrics (particularly those  
5 involving change management, confirmation and rejection completeness, software  
6 validation and error correction, timely completion notices and loss notifications)  
7 are geared toward ensuring that ALECs' market entry does not run into many of  
8 the same impediments encountered elsewhere. These impediments have not only  
9 slowed ALECs' growth in the residential market, but they also have harmed  
10 customers with double billing and sometimes even local service termination when  
11 the ILEC wrongly concluded that a customer was not paying its bills when in fact  
12 the customer had been switched to an ALEC and was paying the ALEC's bills.

13 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

14 A. The purpose of my testimony is to discuss the additional metrics to be reported by  
15 BellSouth; appropriate business rules, exclusions, calculations, disaggregation and  
16 performance standards; performance audits; and the provision of affiliate data.  
17 My testimony addresses Issues A, 1(a), 1(b), 24(a), 24(b), 25, 26, 27(a), 27(b) 29,  
18 30(a) and 30(b).

19

20 **ISSUE 1(a): WHAT ARE THE APPROPRIATE SERVICE QUALITY**  
21 **MEASURES TO BE REPORTED BY BELL SOUTH?**

22

23 **Q. WHY IS IT IMPORTANT FOR THE METRICS IN A PERFORMANCE**  
24 **MEASUREMENT PLAN TO BE COMPREHENSIVE?**

25

1 A. A performance measurement plan needs to be comprehensive because significant  
2 gaps in coverage can make it extraordinarily difficult and time-consuming to  
3 detect and deter below-parity performance. When an area of BellSouth's  
4 performance is not covered by a metric, the primary tool available to an ALEC to  
5 remedy poor performance is an action to enforce the parties' interconnection  
6 agreement. Enforcement actions based on disparate treatment can be uphill  
7 battles because the ALEC must prove that BellSouth is providing better service to  
8 itself, its customers or its affiliates than to the ALEC. To make its case, the  
9 ALEC must somehow obtain accurate internal BellSouth information concerning  
10 the service it provides to itself, its customers or its affiliates. Even if this can be  
11 done, an enforcement case can take a year or more to complete (at least without  
12 the availability of expedited dispute resolution). which typically is far too long for  
13 an ALEC attempting to solve an immediate problem affecting its business.  
14 Comprehensive performance metrics therefore go hand in hand with the potential  
15 for broad scale entry into the local market.

16 Measurements should cover all problems that can and have arisen through  
17 real market experience with:

18 (A) Service delivery methods such as resale and individual unbundled  
19 network elements (UNEs) (such as loops or transport); UNE  
20 combinations (such as enhanced extended loops and platform); and  
21 facilities interconnection.

1 (B) Products and processes such as coordinated conversions, various  
2 flavors of xDSL and line sharing and splitting services, local number  
3 portability, loop acceptance testing and loop conditioning.

4 (C) Retail-wholesale relationships management such as operational  
5 support systems (OSS) speed and connectivity, help desk  
6 responsiveness, database update accuracy and timeliness, and change  
7 management processes and software error correction timeliness.

8 (D) Provisioning status notices such as acknowledgements, confirmations,  
9 rejections, completion notices, jeopardy notices and loss notices.

10 (E) Maintenance responsiveness and capability in resolving customer  
11 trouble reports.

12 (F) Billing accuracy and completeness for the end user customer and the  
13 ALEC.

14 **Q. WHAT IS THE STATUS IN FLORIDA WITH RESPECT TO THE**  
15 **PERFORMANCE MEASUREMENTS IN PLACE?**

16  
17 A. BellSouth is reporting Service Quality Measurement (SQM) for Florida on its  
18 website. BellSouth's latest SQM in Florida was filed in November, 2000 for the  
19 interim metrics for the third party test. Comments in my attachments propose  
20 changes to this document. If BellSouth files a revised SQM in this proceeding,  
21 the ALEC coalition will have to respond to those revisions in my rebuttal  
22 testimony.

23 **Q. HAS BELL SOUTH BEEN DIRECTED TO ADD METRICS IN OTHER**  
24 **STATE JURISDICTIONS?**

25

1 A. Yes. A final Georgia order issued January 16, 2001 added the following  
2 seventeen metrics to BellSouth's plan:

- 3 • Response Time for Manual Loop Make-Up (LMU) Queries
- 4 • Response Time for Electronic LMU Queries
- 5 • Acknowledgement Timeliness
- 6 • Acknowledgement Completeness
- 7 • FOC/Reject Response Completeness
- 8 • % Completions/Attempts w/o Notice or < 24 hours notice
- 9 • Average Recovery Time for Coordinated Cuts
- 10 • Cooperative Acceptance Testing Attempts vs. Requested by
- 11 ALECs
- 12 • Recurring Charge Completeness
- 13 • Non-recurring Charge Completeness
- 14 • Mean Time to Notify ALECS of Network Outages
- 15 • Mean Time to Notify ALECS of Interface Outages
- 16 • Average Database Update Interval
- 17 • Percent Database Update Accuracy
- 18 • NXX and LRNs loaded and tested by LERG date
- 19 • BFRs processed in 30 business days
- 20 • BFR Quotes provided in X days

21 It also should be noted that in the Georgia proceeding, BellSouth had  
22 reported that it was then in the process of developing the following five  
23 measurements:

- 24 • Service Inquiry with Firm Order (Manual)
- 25 • Loop Makeup Inquiry (Manual and Electronic)
- 26 • Timeliness of Change Management Notices
- 27 • Percentage Functional Acknowledgements Returned on Time

- 1                   • Percentage Troubles within 7 Days of Hot Cut

2                   In addition, as part of an arbitration ruling, the Tennessee Regulatory  
3 Authority has directed BellSouth to incorporate numerous metrics from the Texas  
4 measurement collaborative into the interconnection agreement between BellSouth  
5 and ITC^DeltaCom Communications, Inc.

- 6                   • Firm order confirmation returned within specified time (Texas  
7 Plan Measurement No. 5);
- 8                   • Mechanized rejects returned within one hour (Texas Plan  
9 Measurement No. 10);
- 10                  • Percent of accurate and complete formatted mechanized bills  
11 (Texas Plan Measurement No. 15);
- 12                  • Billing completeness (Texas Plan Measurement No. 17);
- 13                  • Unbillable usage (Texas Plan Measurement No. 20);
- 14                  • Percent busy in the local service center (LSC) (Texas Plan  
15 Measurement No. 23);
- 16                  • Percent busy in the local operations center (LOC) (Texas Plan  
17 Measurement No. 26);
- 18                  • Percent installations completed within industry guidelines for  
19 LNP with loop (Texas Plan Measurement No. 56.1);
- 20                  • Average response time for loop makeup information (Texas Plan  
21 Measurement No. 57);
- 22                  • Directory assistance average speed of answer (Texas Plan  
23 Measurement No. 80);
- 24                  • Operator services speed of answer (Texas Plan Measurement No.  
25 82);
- 26                  • Percentage of LNP-only due dates within industry guidelines  
27 (Texas Plan Measurement No. 91);

- 1           • Percentage of time the old service provider releases the  
2           subscription prior to the expiration of the second nine-hour (T2)  
3           timer (Texas Plan Measurement No. 92);
- 4           • Percentage of customer account restructured prior to LNP due  
5           date (Texas Plan Measurement No. 93);
- 6           • Percentage premature disconnects for LNP orders (Texas Plan  
7           Measurement No. 96);
- 8           • Average days required to process a request (Texas Plan  
9           Measurement No. 106);
- 10          • Percentage of updates completed into the DA database within 72  
11          hours for facility-based ALECs (Texas Plan Measurement No.  
12          110);
- 13          • Average update interval for DA database for facility-based  
14          ALECs (Texas Plan Measurement No. 111);
- 15          • Percentage DA database accuracy for manual updates (Texas Plan  
16          Measurement No. 112);
- 17          • Percentage of premature disconnects (coordinated cutovers)  
18          (Texas Plan Measurement No. 114);
- 19          • Percentage of missed mechanized INP conversions (Texas Plan  
20          Measurement No. 116);
- 21          • Percent NXXs loaded and tested prior to the LERG effective date  
22          (Texas Plan Measurement No. 117);
- 23          • Average delay days for NXX loading and testing (Texas Plan  
24          Measurement No. 118);
- 25          • Mean time to repair NXX problems (Texas Plan Measurement  
26          No. 119);
- 27          • Percentage of access to right of way requests processed within 30  
28          business days (Texas Plan Measurement No. 120); and
- 29          • Percentage of quotes provided for authorized BFRs/special  
30          requests within X (10, 30, 90) days (Texas Plan Measurement No.  
31          121).

1           Thus, many of the metrics that the Florida Public Service Commission has  
2 asked KPMG to evaluate already have been adopted in other BellSouth states.  
3 Most of the remaining metrics ALECs have requested have been adopted in states  
4 outside BellSouth's region, as described elsewhere in my testimony.

5           BellSouth has not yet published a new SQM incorporating most of the  
6 ordered measures from Georgia and Tennessee. If they are added during this  
7 proceeding, ALECs will need to examine associated business rules, exclusions,  
8 calculations, disaggregation and standards to comment on their adequacy in the  
9 same manner as I have done in Exhibit KK-1 attached to my testimony.

10 **ISSUE A       RESULTS OF KPMG'S REVIEW OF BELLSOUTH**  
11 **PERFORMANCE MEASURES**

12  
13 **Q.       HOW SHOULD THE RESULTS OF KPMG'S REVIEW OF BELLSOUTH**  
14 **PERFORMANCE MEASURES BE INCORPORATED INTO THIS**  
15 **PROCEEDING?**  
16

17       As stated above, many of the additional measures under review by KPMG have  
18 been ordered in other jurisdictions and are requested by the ALECs in this docket.  
19 Accordingly, the ALECs urge the Commission to adopt these measures as part of  
20 this proceeding. Additionally, KPMG is reviewing the appropriateness of  
21 BellSouth's existing measures. In my exhibit KK-1, I point out critical changes  
22 that the ALECs urge the Commission to make regarding BellSouth's existing  
23 measures. To the extent KPMG recommends changes to BellSouth's existing  
24 SQM or additional measures beyond those requested by the ALECs in this

1 proceeding, those KPMG recommendations should be reviewed as part of the first  
2 six-month review cycle in this docket.<sup>1</sup>

3 **Q. WHAT METRICS SHOULD BE INCLUDED IN BELLSOUTH'S**  
4 **PERFORMANCE MEASUREMENT PLAN?**

5  
6 A. A number of metrics still need to be added to BellSouth's SQM. ALECs have  
7 proposed the additional measures that were proposed in their issues list submitted  
8 on January 19, 2001 to the Commission. The business rules, calculation formulas,  
9 disaggregation levels and standards for the metrics below are described in  
10 attachment KK-4 to my testimony. I explain the need for these measures below:

11 **1. Additional Pre-Ordering Measures**

12 **OSS- Average Response Time for Loop Makeup Information**

13 While BellSouth has announced plans to add a manual loop qualification metric in  
14 Georgia, it has proposed untenable standards of seven days for manual (compared  
15 to ALECs' proposed 72 hours, which is generous compared to New York's 48  
16 hour standard). Georgia recently ordered three days as requested by the ALECs.  
17 BellSouth needs to provide ALECs with access to loop makeup information  
18 quickly. Loop makeup information is information about the physical  
19 characteristics of the loop. This information is necessary for some ALECs to  
20 determine the services, particularly for digital subscriber line ("DSL" or "xDSL")  
21 services, that they can provide over a loop. BellSouth has only recently made  
22 electronic access to loop makeup available for ALECs in Florida. As a result,

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<sup>1</sup> According to the current procedural schedule in this docket, the Staff will issue its recommendation on June 14, it will be voted on by the Commission on June 26, and an order will be issued by July 16. It is not clear that KPMG's recommendation will be available to incorporate into this proceeding.

1 while some ALECs are building their side of the interfaces to use this electronic  
2 access, they are forced to continue to obtain information manually. Moreover, as  
3 indicated in COVAD's direct testimony, BellSouth has admitted in testimony in  
4 Florida and elsewhere that detailed loop information will not be available on  
5 every loop through the electronic systems. Furthermore, BellSouth has admitted  
6 that the loop makeup information housed in Loop Facilities Assignment Control  
7 Systems ("LFACS") may be inaccurate 10% or more of the time. Thus, in  
8 instances where ALECs do not yet have access electronically to loop makeup  
9 information, or where that information is either not available electronically or is  
10 inaccurate (see COVAD testimony), ALECs must rely on manual loop makeup  
11 information. Because ALECs may be unable to inform potential customers of the  
12 type of services that they can provide until they obtain the loop makeup  
13 information, it is important that BellSouth provide this information as quickly and  
14 accurately as possible and that BellSouth's performance be measured. Adding 7  
15 days onto an already elongated loop provisioning process will not provide ALECs  
16 in Florida a meaningful opportunity to compete.

17 OSS-Average Response Time for Loop Makeup Information – Mechanized  
18 (measured individually for each interface – EDI, RoboTag, Tag and LENS)

19  
20 BellSouth has only recently begun providing ALECs with mechanized access to  
21 its loop makeup information. This mechanized access, however, is not available  
22 for all interfaces and BellSouth needs to commit to offering it with the EDI  
23 interface. BellSouth's performance in responding to loop make-up queries should  
24 be measured for each interface. Again, BellSouth's Georgia promise of adding a  
25 mechanized loop qualification metric comes with an unacceptable standard of 4

1 hours (compared to ALECs' proposed less than 1 minute standard, which is  
2 comparable to Texas' benchmark and New York's "parity plus 4 seconds"  
3 results). The Georgia PSC agreed with ALECs and ordered a benchmark for  
4 electronic loop qualification of 5 minutes immediately, to be reduced to 1 minute  
5 in six months. Further, BellSouth only proposed to meet its lax standard 85% of  
6 the time, not 95% of the time as required in New York and Texas.

7 **2. Additional Ordering Measures**

8 OP-Acknowledgement Timeliness

9 OP-Acknowledgement Completeness

10  
11 ALECs need to know their orders are being received by BellSouth's operational  
12 systems. These acknowledgements are received before a confirmation or  
13 rejection of the order can be established. The lack of such an acknowledgement  
14 message (known as a 997 message on EDI interfaces) is the first indication that an  
15 order submitted by an ALEC is jammed somewhere in BellSouth's systems and  
16 will not be processed without human intervention. This can mean that service to  
17 the customer will be delayed well beyond the requested interval. ALECs need  
18 metrics to monitor how quickly an order is acknowledged by BellSouth's systems  
19 and how many notices are missing once the acknowledgement interval has passed.  
20 BellSouth proposed in Georgia to add a timeliness metric for acknowledgements  
21 and should do so in Florida as well, but the completeness metric is even more  
22 critical and BellSouth has not indicated plans to add one to date. As noted  
23 previously, Georgia ordered these metrics.

1 OP-Firm Order Confirmation and Reject Response Completeness

2 This measure flags problems with orders trapped in BellSouth's systems. This  
3 can occur even after an acknowledgement notice is sent to the ALEC. The  
4 current confirmation and rejection metrics only capture information on Local  
5 Service Requests (LSRs) received by BellSouth; however, half the LSRs could be  
6 lost in BellSouth's systems and therefore not "received" so they would never be  
7 measured. The current metrics would show on-time performance because missing  
8 LSRs are never captured. In New York, Verizon's metrics had the same  
9 deficiency and as a result Verizon reported excellent performance even though  
10 tens of thousands of orders were lost or mishandled. Ultimately, the FCC and  
11 New York Public Service Commission took action, which led to Verizon paying  
12 \$10 million to ALECs and \$3 million to the U.S. Treasury for its poor  
13 performance. This measure also was ordered by the Georgia PSC.

14 OP-Mean Time to Provide Response to Request for BellSouth-to-ALEC Trunks

15 OP-Percent Responses to Requests for BellSouth-to-ALEC Trunks Provided  
16 within 7 Days

17 OP-Percent Negative Responses to Requests for BellSouth-to-ALEC Trunks

18 ALECs cannot expand without adequate trunk capacity inbound from the ILEC as  
19 well as outbound to the ILEC. ILEC delays in providing reciprocal trunks or  
20 delays in providing ALECs a due date for such trunks forces ALECs to delay  
21 installing new customers. ALECs would rather manage a single customer's  
22 expectation for a due date than install a customer that will cause further blocking  
23 on inbound calls to all ALEC local customers in the area. ILEC delays on trunk  
24 resizing keep ALECs from growing market share. The proposed measures in this  
25

1 area should apply regardless of how an ALEC sends its request, whether via fax,  
2 email or as an Access Service Request (ASR).

3 The Mean Time to Provide Response measurements is key when  
4 comparing service to affiliates for response to trunk requests. The Percent  
5 Responses to Requests for BellSouth-to-ALEC Trunks Provided Within 7 Days  
6 metric measures the response standard proposed by ALECs to be achieved 95% of  
7 the time. Finally, the Percent Negative Responses to Requests for BellSouth-to-  
8 ALEC Trunks metric would allow tracking of BellSouth rejections of ALEC  
9 requests for more capacity. These are not rejections for ALEC errors but cases  
10 where BellSouth argues that additional trunks are not needed. BellSouth's policy  
11 is that it is appropriate to begin trunk augmentation of a final trunk group when  
12 utilization reaches 75-85%. ALEC growth is more dynamic than BellSouth's and  
13 a 50% fill can quickly move to blocking levels with the addition of one large  
14 customer. That is, when utilization reaches 50%, it is prudent to plan for trunk  
15 augmentation because merely adding one large customer can easily bump up  
16 blockage levels to 85% or higher. The addition of customers with high inbound  
17 calling volumes can bump even lower fill rates than 50% up to blocking levels.  
18 These overall utilization rates also do not reflect blocking that would occur during  
19 busy hours but not other times of day.

### 20 **3. Additional Provisioning Measures**

#### 21 OP- Order Accuracy

22 BellSouth currently reports this metric, albeit on a flawed basis, for Georgia. (See  
23 revisions proposed for Georgia metric in table KK-1.) Florida ALECs also need

1 to ensure that BellSouth provisions an order the way it was entered or faxed by  
2 the ALECs. An Order Accuracy metric would capture whether orders are  
3 changed through BellSouth's manual handling of partially mechanical or faxed  
4 orders and thus provisioned inaccurately in great annoyance to the customer.

5 OP-Percent Completions/Attempts without Notice or with Less Than 24 Hours  
6 Notice

7  
8 Missed or late confirmations make ALECs look disorganized since they have to  
9 scramble to meet the due date or are caught off guard by a service delivery to their  
10 customer. Such absent or late notices can lead to "customer not ready" situations  
11 where late service delivery is wrongly blamed on the ALEC and excluded from  
12 the interval metrics. The Georgia PSC also ordered this metric.

13 OP-Percent On-Time Hot Cut Performance

14 ALEC customers often suffer from degraded or lost service through ILEC  
15 mistakes or failure to adhere to established cutover procedures. An early cut of  
16 facilities can cause the customer to lose service. If the time is during business  
17 hours, this can be devastating to the customer who relies on the telephone. A late  
18 cut translation often means the customer cannot receive all or certain incoming  
19 calls. Either is harmful to ALECs' reputations and can lead to costly lawsuits if  
20 service is lost unexpectedly during business hours. Both Texas and New York  
21 have similar measures to capture these important processes.

22 OP-Percent of Orders Cancelled or Supplemented at the Request of the ILEC

23  
24 This metric, adopted in the New York Carrier-to-Carrier proceeding, captures  
25 when ALECs do not extend the due date voluntarily but rather at the request of  
26 BellSouth in order to adjust for BellSouth-caused failures to complete the order.

1 When an ALEC agrees to supplement the order at BellSouth’s request, what  
2 would have been a missed due date now gets a new due date in the future.

3 Therefore, without this metric, BellSouth would meet the measure even though  
4 the customer and ALEC are frustrated with the later date.

5 OP-Percent of Coordinated Cuts Not Working as Initially Provisioned

6 This metric captures when loops are provisioned on time but are not working.  
7 Often ALECs cannot log a trouble report until the order is completed in the  
8 ILEC’s billing system, and that may take many hours or days. Consequently,  
9 these provisioning troubles are undetectable by BellSouth’s current performance  
10 measures.

11 OP-Average Recovery Time

12 When early or late cuts occur it is important to get the customer’s service  
13 promptly restored and switched over to the ALEC, assuming there has been an  
14 outage. This metric measures how quickly service is restored to the ALEC. Both  
15 New York and Texas have similar measures. The Georgia PSC also adopted this  
16 measure.

17 OP-Mean Time to Restore a Customer to the ILEC

18 OP-Percent of Customers Restored to the ILEC

19  
20 These metrics measure the speed of restoring service to BellSouth when a  
21 customer conversion fails and the percent of accurate port-backs to BellSouth  
22 when necessary. Customers need to have service and may not be able to wait for  
23 the conversion to work. Therefore, the customer would be ported back to  
24 BellSouth. Restorations due to ALEC errors would need to be excluded from this  
25 metric.

1 OP-Call Abandonment Rate – Ordering and Provisioning

2 MR-Call Abandonment Rate -Maintenance

3  
4 BellSouth only captures the call center response time for customers who wait for  
5 their calls to be completed. The number of customers who abandon the call  
6 because of long waits in queue are not captured and that causes any problem in  
7 the call center answer time metrics to be understated. Mpower's testimony  
8 regarding long hold times may indicate the need for an abandonment  
9 measurement to capture those calls where the ALEC gives up in frustration.

10 OP-Percent xDSL Lines Cooperatively Tested

11 OP-Percent Successful xDSL Service Testing

12  
13 ALECs need to have cooperative testing done on xDSL loops to determine if  
14 BellSouth has done all the appropriate work to provide connectivity. Like  
15 coordinated cuts, this also should be part of the end time measurement for  
16 Average Completion Interval and Missed Appointment metrics for xDSL loops,  
17 but it is not in BellSouth's proposal. In New York, Verizon measures for both  
18 ALECs that use and do not use an acceptance process as part of its Missed  
19 Appointment metrics for xDSL service. This measure goes beyond that and  
20 reports on how many loops BellSouth actually did test.

21           Along the same lines, BellSouth should measure the percent of successful  
22 xDSL cooperative testing. Similar to the defective loop metric for coordinated  
23 cuts, this measure would pick up how often an xDSL loop that is not working is  
24 delivered to the ALEC. This metric could be disaggregated by reason codes for  
25 the loop not working and while one remedy would apply for missing the standard  
26 for delivering working xDSL loops, the disaggregation would aid BellSouth in  
27 root cause analysis to address the problem area. COVAD's testimony

1 underscores the importance of joint testing between ALEC and ILEC in providing  
2 timely working xDSL service to the customer. Georgia ordered the Percent  
3 Tested metric proposed above.

4 OP- (disaggregation or new metric) - Percent Completion of Timely Loop  
5 Modification/Conditioning on xDSL loops

6  
7 Some loops require modification or conditioning before they can be used to  
8 provide a customer with xDSL service. This metric measures BellSouth's  
9 timeliness in making the needed modifications or performing the necessary de-  
10 conditioning. COVAD's testimony emphasizes the need for a metric or at least  
11 disaggregation for interval metrics and held orders for loop provisioning where  
12 conditioning is required.

13 **4. Additional Billing Measures**

14 BL-Percent Billing Errors Correct in X Days

15 BellSouth delays in providing adjustments to carrier bills or correct daily usage  
16 feed errors can harm the ALEC and its customer in several ways. Errors that do  
17 not get corrected promptly in the daily usage file either lead to the ALEC's  
18 holding up charges or passing on wrong charges to the customer, which the ALEC  
19 has to expend resources to adjust later. BellSouth's invoice accuracy measure  
20 does not capture whether errors are corrected within a reasonable time.

21 BL- Usage Timeliness

22 BellSouth measures the percentage of recorded usage data that is delivered to the  
23 ALEC within six calendar days from the receipt of the original recording. ALECs  
24 also need to know how timely the usage records on average are delivered to  
25 ALECs, and therefore request this additional measure.

1 BL-Recurring Charge Completeness

2 This metric is similar to Texas Measure 17, which has been ordered implemented  
3 in Tennessee. ALECs need all charges promptly billed so that they can audit  
4 properly. ALECs do not believe the audits BellSouth claims it is doing focus on  
5 wholesale bills or capture missing charges. This metric also was adopted by the  
6 Georgia PSC.

7 BL-Non-Recurring Charge Completeness

8 Non-recurring charges need to be timely on bills to make it easier for ALECs to  
9 keep check on their costs. Where such non-recurring charges get passed on to  
10 customers, the ALEC needs them in a timely manner to avoid disputes over late  
11 charges the customer no longer recalls. The ALEC needs to be in compliance  
12 with any state back-billing limitations regarding passing on such charges to the  
13 customer. The Georgia PSC ordered this additional billing metric as well.

14 BL- Percent On-Time Mechanized Local Service Invoice Delivery

15 Not only do the charges on the bills need to be correct and complete but also the  
16 formatting must follow appropriate industry standards so that they can be  
17 electronically processed in the ALEC systems. Without properly mechanized  
18 bills, ALECs may be forced to reconcile boxes of paper bills for charges that  
19 cannot be accepted or audited by their electronic systems.

20 5. Other Additional Measures

21 MI- Percent Response Commitments Met On Time

22 Even more important than how quickly BellSouth representatives answer the  
23 phone is how quickly they answer questions or resolve problems. ALECs should

1 not have to wait days for BellSouth to respond to a problem that has stalled  
 2 production of orders for the ALEC. The addition of this metric would help  
 3 address MPower’s issues with the slow response of BellSouth help desks.  
 4 However, such a measure would not help with Mpower’s issues regarding  
 5 BellSouth representatives accurately interpreting business rules. Help Desk  
 6 responsiveness on missing notifier (confirmations, rejection, completion)  
 7 problems is also crucial to ALECs. Verizon’s problems in this area led to the  
 8 introduction of a three-day standard for resolving such requests in the New York  
 9 metrics. The Commission should adopt a measurement and standard for  
 10 responsiveness to all help desk questions that impede an ALEC’s ability to place  
 11 orders or response to customer status questions about their order.

12 MI- Mean Time To Notify ALEC of Network Outages

13 If an ALEC’s maintenance team must wait longer to learn of a network outage  
 14 than BellSouth’s maintenance team, the ALEC is placed at a disadvantage  
 15 because it has less time to devise alternatives for customers. Knowing about an  
 16 outage promptly as well as the estimated time of resolution can help ALECs  
 17 address customer calls and concerns about disrupted service. This metric was  
 18 among those added by the Georgia Commission.

19 MI-Average Update Interval

20 MI-Percentage Database Update Accuracy

21  
 22 ALEC customers are concerned if their information is not in BellSouth’s directory  
 23 assistance and directory listings database promptly and accurately after obtaining  
 24 service from their new ALEC. The Georgia PSC ordered this metric for directory  
 25 assistance and directory listings.

1 OP-NXX and LRN(s) Loaded by LERG Effective Date

2 Failure to load the ALEC's NXXs and LRNs in BellSouth's switches and tandems  
3 and perform testing by the LERG (Local Exchange Routing Guide) effective date  
4 can delay an ALEC's switch launch or calling area expansion in a market. It also  
5 can keep a new customer from getting personal or business calls they used to  
6 receive and decrease the non-toll calling area to which they are accustomed.

7 Again, this measure was ordered by Georgia.

8 OSS-Notification of Interface Outages

9 ALECs need to be informed promptly when BellSouth's systems are down so that  
10 they can make alternative work plans. Failure to timely inform ALECs of  
11 BellSouth outages can cause them to waste time troubleshooting their own  
12 interfaces. Timely notification also prevents BellSouth's help centers from being  
13 inundated with calls about an already known outage. This is also among the newly  
14 ordered Georgia metrics.

15 CM- Percent Change Management Notices Sent On Time

16 CM- Average Delay Days for Notices

17 CM- Percent Change Management Final Documentation Sent on Time

18 CM-Average Delay Days for Documentation

19 CM- Percent ILEC vs. ALEC Changes Made

20  
21 BellSouth has included metrics covering the timeliness of Change Management  
22 Notices and Documentation in the OSS test SQM. As my Exhibit KK-1 explains,  
23 there are many deficiencies with the business rules in the November 2000 SQM.  
24 Further, reporting under these metrics on BellSouth's web site appears to be  
25 different from what the business rules appear to require. In addition, there are  
26 additional change control metrics that need to be added to ensure that ALEC

1 interfaces are not in jeopardy of being shut down without prompt relief. Often  
2 ILEC failures to adhere to change management notice requirements have caused  
3 delays in the building, or have stopped the functioning, of ALEC OSS interfaces.  
4 BellSouth must measure its adherence to its change management notice  
5 commitments and definitions of emergency notices. This is necessary to avoid  
6 BellSouth's OSS software changes from harming competitors. New York has  
7 added an additional metric to monitor timely availability of full and accurate  
8 documentation related to change notices and Texas has recently agreed to two  
9 change management measures, one for notices and documentation timeliness and  
10 one for software problem resolution timeliness.

11 ALECs need timely notices of changes to plan for them and determine  
12 what changes are required on their side of the interface. At best, late notices  
13 require ALECs to pull information technology personnel from other projects to  
14 keep the existing interface from going down. At worst, the ALEC cannot act  
15 quickly enough to stop the changes from harming its production. Having a  
16 change management process is not enough; reported data and enforcement of the  
17 process is needed to ensure the process is effective and being followed.

18 Final documentation, in addition to the change management notice, must  
19 be sent on time so ALECs can begin working on the changes to be ready from  
20 their end. Without the documentation to support the changes, ALECs cannot  
21 begin the necessary work. e.spire's testimony shows the harm delayed and  
22 inadequate documentation can cause ALECs trying to enter the Florida  
23 marketplace.

1           BellSouth has not yet included a metric in its SQM that tracks whether it  
2 responds fairly to ALEC requests for changes and new functionalities on its  
3 interfaces. While ALECs prioritize the change requests, BellSouth implements  
4 these changes whenever it chooses, and it ignores the prioritization. Therefore,  
5 the Commission needs to order BellSouth to measure the percentage of BellSouth  
6 changes made versus the number of ALEC changes made to determine whether  
7 ALEC requests for interface changes are being implemented in a fair and  
8 equitable manner.

9           OSS- Percent Software Certification Failures

10           This measurement provides some assurance that BellSouth will sufficiently test  
11 before a system is rolled out. ALECs need to be sure that their existing systems  
12 still will be able to function when BellSouth introduces software upgrades.

13           OSS- Software Problem Resolution Timeliness

14           OSS- Software Problem Resolution Average Delay Days

15  
16           This metric examines how quickly BellSouth fixes software errors caused by  
17 changes to an existing interface, establishment of a new query type or other  
18 changes. Different standards are set based on whether there is a work-around for  
19 the problem. If an ALEC is prevented from entering orders, extremely prompt  
20 responses are required. The delay day measure captures the degree to which the  
21 problem is allowed to continue. As mentioned previously, Georgia recently  
22 ordered BellSouth to add a Software Error Correction timeliness metric, and the  
23 New York and Texas plans also include such a metric. In addition, the New York  
24 plan includes a Software Validation metric, to ensure that interfaces are not

1 launched while still failing a test deck of transactions that ALECs and Verizon  
2 have developed.

3 **Q. FROM TIME TO TIME, SHOULD THE COMMISSION REVIEW THE**  
4 **METRICS IT ADOPTS?**

5  
6 A. Yes. It is fair to say that the area of performance measurements still is evolving.  
7 In some cases, for example, BellSouth may (and should) develop new  
8 functionalities that will need to be measured. For instance, ALECs need timely  
9 billing completion notices, which notify an ALEC that BellSouth's billing system  
10 has been adjusted to account for the customer migrating to the ALEC, so the  
11 ALEC may begin billing its customers, sending fulfillment information and  
12 addressing any problems or issues its customer encounters. If the Commission  
13 orders BellSouth to provide billing completion notices, then a metric should be  
14 adopted (or an existing metric expanded) to measure BellSouth's performance in  
15 this area. This is different from annual audits, which focus on whether the metric  
16 is being reported properly with accurate coding of exclusions and adherence to  
17 reporting guidelines. The metric and remedies plan review is designed to  
18 determine if metrics and remedies are sufficient as they are or require additions,  
19 deletions or modifications to promote competition. The scope of the review  
20 should include all existing metrics, rules, calculations, disaggregation and  
21 standards; the need for new metrics; the need to eliminate or revise useless  
22 metrics; and the adequacy of the current remedy plan. ALEC market experience  
23 will continue to grow and indicate whether adjustments to the remedy plan and  
24 metrics are needed.

1 Other states have set six-month reviews of metrics. Most recently,  
2 Georgia has ordered a staff review every six months. The New York Carrier-to-  
3 Carrier Working Group continues to meet monthly, developing a report on  
4 consensus and nonconsensus items to be referred to the commission, accompanied  
5 by an Administrative Law Judge recommendation, for a vote. Texas also has  
6 adopted a review process for SBC's metrics. Although ILECs often dispute new  
7 measures or changes claiming that Verizon-NY and SBC-Texas received 271  
8 approval without them, both Texas and New York have added new metrics,  
9 modified standards, and taken other actions post-271 approval. Vigilance is  
10 required to ensure that metric and remedy systems are appropriate to open local  
11 markets in the first place as well as to prevent backsliding after 271 approval.  
12 Staff's testimony recognizes the need for such reviews. (Paul Stallcup, pg. 18).

13 **ISSUE 1(b): WHAT ARE THE APPROPRIATE BUSINESS RULES,**  
14 **EXCLUSIONS, CALCULATIONS, AND LEVELS OF DISAGGREGATION AND**  
15 **PERFORMANCE STANDARDS FOR EACH?**  
16

17 **Q. PLEASE EXPLAIN WHAT IS MEANT BY BUSINESS RULES AND WHY**  
18 **THEY ARE IMPORTANT IN METRIC DEFINITION.**

19  
20 **A.** Business rules are the heart of every measure. Business rules state the start and  
21 stop time of each metric and provide details necessary to describe processes in  
22 between. The rules on how the data will be collected for ALECs and for  
23 BellSouth also are included. The business rules need to be detailed enough that a  
24 third party can use them to recreate BellSouth's performance measurement reports  
25 using BellSouth's raw data. They also must be structured to ensure that BellSouth  
26 discrimination is not being masked.

1           Business rule issues often require discussion of the substantive aspects of  
2           BellSouth's OSS. For example, in the Percent Rejected Service Requests  
3           measure that BellSouth has proposed, BellSouth has stated that an LSR should be  
4           rejected and sent back to the ALEC once the first known error is discovered. This  
5           approach means that if an LSR contains more than one error, that order may be  
6           rejected several times because only one error at a time may be identified. Multiple  
7           rejections of the same order leads to considerable wasted time and effort. If  
8           BellSouth's rejection interval is based on such business rules, BellSouth's  
9           performance may be portrayed as being good when in fact there is a significant  
10          problem with BellSouth's process.

11           e.spire's testimony regarding problems with receiving notice of facility  
12          holds on orders after receiving a firm order confirmation may be addressed by a  
13          business rule for Missed Appointments. The ALECs propose that in such  
14          circumstances where a facilities pending notice follows a confirmation, the due  
15          date on that confirmation will be considered missed. The facilities check should  
16          have been completed beforehand.

17   **Q.   WHY ARE EXCLUSIONS NECESSARY?**

18   A.   There may be several legitimate reasons to exclude certain circumstances from a  
19          measure. These need to be agreed upon so everyone understands what the  
20          measure does and does not include. Failure or delay caused by the ALEC or the  
21          ALEC's customer is an example of a reason for excluding a transaction from the  
22          data to be reported, at least for remedy purposes.

1 **Q. WHAT DOES THE METRIC CALCULATION INVOLVE?**

2 A. The metric calculation is the mathematical equation that generates the  
3 performance result. Once the appropriate data for a metric has been collected, it  
4 can be input into the calculation formula to produce a numerical result.

5 **Q. WHAT IS DISAGGREGATION?**

6  
7 A. Disaggregation involves breaking down performance data into sufficiently  
8 specific categories so that like-to-like comparisons can be made. Disaggregation  
9 prevents poor performance in one area (such as xDSL) from being obscured by  
10 being lumped together with other performance data. Just as it is important for  
11 performance metrics to be comprehensive in scope, it is critical that performance  
12 reporting be required at a sufficiently detailed level to provide meaningful results.  
13 Covad's testimony discusses further the need for xDSL and line sharing/splitting  
14 disaggregation.

15 **Q. IN GENERAL, WHAT TYPES OF DISAGGREGATION SHOULD BE  
16 REQUIRED IN A PERFORMANCE MEASUREMENT PLAN?**

17 A. Disaggregation should be required by geography, interface type, pre-order query  
18 type, product, service order activity, volume category, trouble type, trunk design  
19 and type (for trunk blockage measurements), maintenance and repair query type  
20 and collocation category. e.spire's testimony indicates that disaggregated  
21 reporting for Special Access to Enhanced Extended Loop conversions are  
22 required for the ordering and provisioning metrics to capture problems it has run  
23 into in migrating between the two BellSouth services. I will discuss the additional  
24 disaggregation needed in my exhibits. See KK-1 and KK-2.

1 **Q. SHOULD BELL SOUTH BE REQUIRED TO REPORT ON ITS**  
2 **PERFORMANCE IN FLORIDA FOR EACH MEASUREMENT?**  
3

4 A. Yes, unless all BellSouth activity comes from a centralized location and the data  
5 cannot be separated and is not different in process, Florida data should be  
6 reported. BellSouth's performance relating specifically to Florida customers  
7 cannot be evaluated unless BellSouth reports its performance for Florida. The  
8 same ALECs do not operate in all the same states, let alone at the same volumes  
9 in each state or with the same type of product mixes. Products ordered in Florida  
10 may be more advanced than in another state causing intervals to vary and bill  
11 invoices and usage feeds to be more complex. To report a particular service for  
12 an entire nine-state region would not allow ALECs or the Commission to  
13 understand the level of performance in Florida.

14 **Q. PLEASE EXPLAIN WHY REPORTING AT THE LOCAL LEVEL (SUCH**  
15 **AS BY MSA) IS IMPORTANT.**  
16

17 A. If only statewide reporting is provided, ALECs that operate only in discrete areas  
18 of the state cannot compare the performance they receive to what BellSouth  
19 provides itself in those areas. Because service levels may vary from area to area,  
20 such ALECs cannot determine whether they are receiving parity of service.  
21 BellSouth currently reports provisioning and repair metrics at an MSA level in  
22 Louisiana.

23 **Q. PLEASE EXPLAIN WHY METRICS SHOULD BE DISAGGREGATED**  
24 **BY INTERFACE TYPE.**  
25

26 A. One interface may react quicker or slower than another. The only way to  
27 determine, for example, whether BellSouth's TAG interface meets the applicable

1 standards is to review data specifically for that interface. If TAG data is lumped  
2 together with EDI data, the performance of the TAG interface will be obscured.

3 **Q. PLEASE EXPLAIN WHY PRE-ORDER QUERY TYPE**  
4 **DISAGGREGATION IS IMPORTANT.**

5  
6 A. Pre-order query type disaggregation is important because a request for something  
7 simple like a phone number may require less response time than a request for  
8 something more complex like a due date reservation or loop makeup information.  
9 Disaggregation for response time for error messages and percent time outs also  
10 need to be included.

11 **Q. PLEASE EXPLAIN WHY METRICS SHOULD BE DISAGGREGATED**  
12 **BY PRODUCT.**

13  
14 A. Product disaggregation is key because different performance can be expected  
15 based on the type of product being ordered. Lumping together one type of order  
16 that has a two day interval with another type of order that has a ten day interval  
17 and producing a report showing that on average the orders are provisioned in  
18 seven days tells one nothing about whether either type of order was provided at  
19 parity or met the benchmark. Such aggregate treatment masks disparities in  
20 service and should not be permitted. The basic principle of product  
21 disaggregation is that each product should be tracked separately. Examples of  
22 product disaggregation include resale, UNEs and trunks, broken down by  
23 residential and business customer, where appropriate. Further disaggregation for  
24 resale and UNEs include DS1s and DS3s. DS1s and DS3s have differing  
25 provisioning and repair intervals and complexities that require separate reporting.  
26 Separating BRI ISDN from PRI ISDN is important for the same reason. Different

1 unbundled loop types, such as analog voice-grade loops, digital loops, ADSL  
2 loops, HDSL loops, UCLs and xDSL loops, also should be disaggregated because  
3 BellSouth's performance will vary for each loop type. Additionally, UNE-  
4 Platform needs to be reported separately because this product combines a loop  
5 with switching and transport and is different from just ordering a without the  
6 switching and transport. ALECs simply want products disaggregated to the level  
7 where relatively few dissimilarities are expected to exist.

8 **Q. PLEASE DESCRIBE WHY IT IS IMPORTANT TO DISAGGREGATE BY**  
9 **TYPE OF WORK PERFORMED.**

10 A. In the provisioning and repair of services, BellSouth's personnel can perform  
11 work in three basic ways: 1) through software change entered into a computer; 2)  
12 via central office work; or 3) by dispatching a technician into the "field" at remote  
13 facilities or the end-users premises. These three different types of work activities  
14 can require significantly differing amounts of time, and combining them or  
15 comparing one type of results to a different type, e.g. BellSouth's current practice  
16 of comparing UNE orders to dispatch only retail, results in misleading  
17 information about the amount of time required to perform activities for the ALEC  
18 compared to itself. Although BellSouth currently reports by dispatch and non-  
19 dispatch activity, it improperly combines dispatch in and dispatch out  
20 performance that can mask non-parity performance. BellSouth should be required  
21 to cease its current discriminatory reporting practices and report data for itself and  
22 the ALECS as follows, software changes, dispatch in, and dispatch out.

23 **Q. WHY DO ALECS WANT METRICS DISAGGREGATED BY VOLUME**  
24 **CATEGORY?**

1 A. Volume category disaggregation captures differences that may arise based on, for  
2 example, the number of lines being ordered. ALECs recognize that the  
3 appropriate interval for a particular metric may depend on whether, say, five or  
4 fifty lines are being ordered.

5 **Q. WHY SHOULD THERE BE DISAGGREGATION BY TROUBLE TYPE?**

6 A. Lumping together different kinds of troubles leads to meaningless results. For  
7 example, data for the mean time to restore service for a trouble requiring dispatch  
8 to the customer's premises should not be included in the same data set as the  
9 mean time to restore service for a trouble not requiring a dispatch. If one  
10 customer trouble is restored with a dispatch, and another is restored without a  
11 dispatch, and the average of the two restoration intervals is six hours, we would  
12 learn nothing about either type of service. The nondispatch service may have  
13 taken a long time or the dispatch service may have taken a rather short time, but  
14 we don't know for sure. Disaggregation by trouble type may also highlight a  
15 repetitive problem and lead to a prompt lasting resolution.

16 **Q. WHY SHOULD THE PERCENT TRUNK BLOCKAGE METRICS BE**  
17 **DISAGGREGATED BY DESIGN AND TYPE?**

18  
19 Aggregating trunks designed at different blocking thresholds could hide serious  
20 blocking problems by averaging trunks designed to block at 2%, 1%, or 0.5%  
21 together. Disaggregation by type is also important so that blocking on crucial  
22 OS/DA or 911 trunks can be monitored by ALECs. BellSouth should at least  
23 disaggregate final dedicated trunks by the following trunk types and industry  
24 blocking standards:  
25

1           Trunk Type

- 2           • OS/DA  
3           • 911

4           Trunk Performance

- 5           • 2% Local and IntraLATA Toll Trunk Groups  
6           • 1% Local Tandem, Local Direct Office Final, IntraLATA interexchange,  
7           911, DA, DA Call Complete,  
8  
9           • 0.5% OS, IntraLATA Tandem Meet Point

10  
11 **Q. WHY IS MAINTENANCE AND REPAIR QUERY TYPE**  
12 **DISAGGREGATION IMPORTANT?**

13  
14 **A.** Maintenance and repair query type disaggregation is important for the same  
15 reasons as pre-order query type disaggregation. Different types of queries can be  
16 expected to take different lengths of time to process.

17 **Q. WHY SHOULD THERE BE DISAGGREGATION BY COLLOCATION**  
18 **CATEGORY?**

19  
20 **A.** Different types of collocations and augments take different amounts of time to  
21 provision. For example, provisioning a cageless collocation space should require  
22 substantially less time than provisioning a caged collocation space. Augments of  
23 collocation space also should generally take less time than installing the original  
24 collocation space.

25 **Q. IN GENERAL, WHAT APPROACH SHOULD THE COMMISSION TAKE**  
26 **WITH RESPECT TO RETAIL ANALOGS AND BENCHMARKS?**

27  
28 **A.** A retail analog is a service or function that BellSouth provides for itself, its  
29 customers or its affiliates that is analogous to a service or function that BellSouth  
30 provides to ALECs. When a BellSouth retail analog exists, BellSouth's

1 performance for itself, its customers and its affiliates should be compared to its  
2 performance for ALECs to determine if BellSouth is meeting the Act's parity  
3 requirement. If no retail analog exists, BellSouth's performance must be gauged  
4 by a performance standard, also known as a benchmark. A benchmark is a set  
5 level of performance, such as provisioning a particular UNE 95% of the time  
6 within three days. *See Application of Ameritech Michigan to Provide In-Region,*  
7 *InterLATA Services in Michigan*, CC Docket 97-137, Memorandum Opinion and  
8 Order, FCC 97-137 at ¶¶ 139-41 (rel. Aug. 19, 1997).

9 **Q. ON WHAT SHOULD BENCHMARKS BE BASED?**

10 A. Benchmarks should be based on the level of performance that can be expected to  
11 offer an efficient carrier a meaningful opportunity to compete. Benchmarks  
12 cannot be based simply on BellSouth's historical performance – that BellSouth  
13 has provided a certain level of service to ALECs in the past does not mean that  
14 level of service provides ALECs a meaningful opportunity to compete or to even  
15 meet Florida's end user standards.

16 **Q. HOW IMPORTANT IS THE CHOICE OF A RETAIL ANALOG?**

17 A. Choosing a retail analog that is dissimilar than the service or product being  
18 measured can make discriminatory performance look like parity. If a slow  
19 process is chosen on the retail side, it masks poor performance on the wholesale  
20 side. If the performance of a BellSouth affiliate is used to judge parity, the  
21 affiliate's activity must be studied to see if it is similar to that of the ALECs' and  
22 makes the appropriate analog.

23 **Q. ARE ALECS PROPOSING ANALOGS AND BENCHMARKS IN THIS**  
24 **DOCKET?**

1 A. Yes. I address the analogs and benchmarks ALECs are proposing in exhibits KK-  
2 1 and KK-3.

3 **Q. SHOULD THE BENCHMARKS ESTABLISHED IN THIS DOCKET BE**  
4 **REVIEWED IN THE FUTURE?**

5  
6 A. Yes. Any numerical benchmark decided in this proceeding would need to be  
7 reviewed in the future. As BellSouth improves its systems and processes, it may  
8 be that the service level BellSouth should be required to provide today is longer  
9 than the time that should be required in the year 2001 and beyond. All  
10 benchmarks will need to be reviewed periodically to ensure that ALECs are given  
11 a meaningful opportunity to compete as the industry progresses.

12 **Q. ARE BELLSOUTH'S BENCHMARKS ADEQUATE TO PROMOTE**  
13 **COMPETITION?**

14  
15 A. No. Many standards are set below the 95% and higher thresholds required in New  
16 York and Texas for most metrics (except call center and OS/DA answer times).  
17 Often not only the percentage of timely performance but also the intervals  
18 themselves are set below those adopted in other states, as COVAD highlights  
19 regarding xDSL intervals for Texas metrics. BellSouth's trunk confirmation and  
20 collocation intervals are excessively long and need to be tightened up to foster  
21 competition in Florida. See exhibits KK-1 and KK-3 for more on the need to  
22 improve BellSouth's performance standards.

23 **Q. ARE THERE PROBLEMS WITH THE BUSINESS RULES, EXCLUSIONS**  
24 **AND DISAGREGATIONS AND STANDARDS IN BELLSOUTH'S SQM?**

25 A. Yes. Exhibit KK-1 describes the reasoning behind disputed or missing language  
26 for each metric in BellSouth's SQM. Although some disaggregation and  
27 standards issues are described in this first exhibit, exhibits KK-2 (disaggregation

1 other than product/UNE type) and KK-3 (analogous and benchmarks) list the  
2 ALEC's specific requirements in detail.

3 **ISSUE 24(a): SHOULD PERIODIC THIRD-PARTY AUDITS OF**  
4 **PERFORMANCE ASSESSMENT PLAN DATA AND REPORTS BE REQUIRED?**

5

6 **Q. SHOULD SUCH AUDITS BE REQUIRED?**

7

8 A. Yes. Comprehensive annual audits of reporting methodology and accuracy of  
9 data (particularly employee use of codes that could lead to exclusion of data from  
10 metrics) are required. In addition, BellSouth's adherence to metric change control  
11 policies should be reviewed as the lack of follow-through on such policies would  
12 thwart the replication of past metric reports. The audit would cover all reporting  
13 procedures and reportable data. It would include all systems, processes and  
14 procedures associated with the production and reporting of performance  
15 measurement results.

16 **ISSUE 24(b): IF SO, HOW OFTEN SHOULD AUDITS BE CONDUCTED, AND**  
17 **HOW SHOULD THE AUDIT SCOPE BE DETERMINED?**

18

19 **Q. HOW OFTEN SHOULD SUCH AUDITS BE CONDUCTED, AND HOW**  
20 **SHOULD THE AUDIT SCOPE BE DETERMINED?**

21

22 A. A comprehensive audit should be conducted every twelve months, with the first  
23 such audit commencing twelve months after the conclusion of the KPMG OSS  
24 Test's metric replication. The audit scope should be determined in an audit process  
25 that is open to ALECs.

26 **ISSUE 25: IF PERIODIC THIRD-PARTY AUDITS ARE REQUIRED, WHO**  
27 **SHOULD BE REQUIRED TO PAY THE COST OF THE AUDITS?**

28

29 **Q. WHO SHOULD BE REQUIRED TO PAY AUDIT COSTS?**

30

1 A. Costs for these annual audits should be borne by BellSouth. BellSouth is the  
 2 dominant market provider with the incentive and ability to discriminate. To  
 3 ensure that BellSouth's reporting is accurate and trigger remedies designed to  
 4 curb its incentives to discriminate, comprehensive annual audits are critical. The  
 5 FCC's order approving Verizon's 271 application to enter the New York long-  
 6 distance market noted that an important characteristic of Verizon's Amended  
 7 Performance Assurance Plan was "reasonable assurances that the reported data is  
 8 accurate." *In re: Application by Bell Atlantic New York for Authorization Under*  
 9 *Section 271 of the Communication Act to Provide In-Region, InterLATA Service*  
 10 *in New York*, CC Docket No. 99-295, Memorandum Opinion and Order ¶ 433  
 11 (rel. Dec. 22, 1999). This assurance should come at the incumbent's expense.

12 **ISSUE 26: WHO SHOULD SELECT THE THIRD-PARTY AUDITOR IF A**  
 13 **THIRD-PARTY AUDIT IS REQUIRED?**

14  
 15 **Q. WHO SHOULD SELECT THE THIRD-PARTY AUDITOR?**

16  
 17 A. The third-party auditor should be jointly selected by BellSouth and the ALECs. If  
 18 the parties cannot agree on the auditor, the Commission should determine the  
 19 auditor.

20 **ISSUE 27(a): SHOULD AN ALEC HAVE THE RIGHT TO AUDIT OR**  
 21 **REQUEST A REVIEW BY BELL SOUTH FOR ONE OR MORE SELECTED**  
 22 **MEASURES WHEN IT HAS REASON TO BELIEVE THE DATA COLLECTED**  
 23 **FOR A MEASURE IS FLAWED OR THE REPORT CRITERIA FOR THE**  
 24 **MEASURE IS NOT BEING ADHERED TO?**

25  
 26 **Q. SHOULD AN ALEC HAVE THE RIGHT TO REQUEST A MINI-AUDIT?**

27  
 28 A. Yes. In addition to an annual audit, ALECs should have the right to mini-audits of  
 29 individual performance measures/submeasures during the year. When an ALEC  
 30 has reason to believe the data collected for a measure is flawed or the reporting

1 criteria for the measure is not being adhered to, it should have the right to have a  
2 mini-audit performed on the specific measure/sub-measure upon written request  
3 (including e-mail), which will include the designation of an ALEC representative  
4 to engage in discussions with BellSouth about the requested mini-audit. If, thirty  
5 days after the ALEC's written request, the ALEC believes that the issue has not  
6 been resolved to its satisfaction, the ALEC should be able to commence the mini-  
7 audit upon providing BellSouth with five business days advance written notice.  
8 Each ALEC would be limited to auditing three single measures/sub-measures or  
9 one domain area (preorder, ordering, provisioning, maintenance or billing) during  
10 the audit year. The audit year would begin with the start of the OSS test (or an  
11 annual audit). Mini-audits could be requested for months including and  
12 subsequent to the month in which the KPMG OSS or an annual audit was initiated.  
13 Mini-audits could not be requested by an ALEC while the OSS third party test or  
14 an annual audit was being conducted (that is, before completion).

15 Mini-audits would include all systems, processes and procedures  
16 associated with the production and reporting of performance measurement results  
17 for the audited measure/sub-measure. Mini-audits would include two months of  
18 data. All parties agree that raw data supporting the performance measurement  
19 results will be available monthly to ALECs.

20 No more than three mini-audits would be conducted simultaneously unless  
21 more than one ALEC wanted the same measure/sub-measure audited at the same  
22 time, in which case mini-audits of the same measure/sub-measure should count as  
23 one mini-audit for this purpose. Mini-audits would be conducted by a third-party

1 auditor, selected by the same method as described above. BellSouth would pay  
 2 for fifty percent of the costs of the mini-audits. The other fifty percent of the  
 3 costs will be divided among the ALEC(s) requesting the mini-audit unless  
 4 BellSouth is found to be “materially” misreporting or misrepresenting data or to  
 5 have non-compliant procedures, in which case, BellSouth would pay for the entire  
 6 cost of the third party auditor. BellSouth would be “materially” at fault if a  
 7 reported successful measure changed as a consequence of the audit to a missed  
 8 measure, or if there was a change from an ordinary missed measure to  
 9 intermediate or severe. Each party to the mini-audit should bear its own internal  
 10 costs, regardless of which party ultimately bears the costs of the third party  
 11 auditor.

12 If, during a mini-audit, it was found that for more than thirty percent of the  
 13 measures in a major service category BellSouth was “materially” at fault (that  
 14 is, a reported successful measure changes as a consequence of the audit to a  
 15 missed measure, or there was a change from an ordinary missed measure to  
 16 intermediate or severe), the entire service category would be re-audited at  
 17 BellSouths’s expense. The major service categories for this purpose would be:

- 18 • Pre-Ordering/Ordering
- 19 • Billing
- 20 • Provisioning - POTS and UNE Loop and Port Combinations
- 21 • Provisioning - Resale Specials and UNE Loop and Port Combinations
- 22 • Provisioning - Unbundled Network Elements
- 23 • Maintenance - POTS and UNE Loop and Port Combinations
- 24 • Maintenance - Resale Specials and UNE Loop and Port Combinations
- 25 • Maintenance - Unbundled Network Elements
- 26 • Interconnection Trunks
- 27 • Local Number Portability
- 28 • Database - 911
- 29 • Database - Directory Assistance

- 1           • Database - NXX
- 2           • Collocation
- 3           • Coordinated Conversions

4  
5           Each mini-audit should be submitted to the ALEC involved and to the Commission  
6           as a proprietary document. BellSouth should provide notification to all ALECs of  
7           any mini-audit requested when the request for the audit is made.

8   **Q.    SHOULD BELLSOUTH BE REQUIRED TO PROVIDE THE RAW DATA**  
9   **UPON WHICH ITS PERFORMANCE REPORTS ARE BASED?**

10  
11   **A.    Yes.** Although BellSouth provides raw data for several measures today, in other  
12           cases, such as LNP measures, it does not. Further, in other cases BellSouth  
13           provides raw data, but not in a manner that allows its meaningful use by the  
14           ALEC. For example, while BellSouth provides raw data for its hot cut timeliness  
15           measure, it does not provide the Purchase Order Number so that an ALEC can  
16           compare its own data to that reported by BellSouth to validate the accuracy of  
17           BellSouth's reports. Finally, other raw data is flawed and thus cannot be used for  
18           its intended purposes of validating BellSouth's performance reports. For example,  
19           the raw data for the FOC and rejection measures includes null values and  
20           calculated duration intervals, not the raw data to allow the ALEC to validate the  
21           reported duration.

22   **ISSUE 27(b): IF SO, SHOULD THE AUDIT BE PERFORMED BY AN**  
23   **INDEPENDENT THIRD-PARTY?**

24  
25   **Q.    SHOULD THE AUDIT BE PERFORMED BY AN INDEPENDENT THIRD**  
26   **PARTY?**

27  
28   **A.**Although there may be cases in which the ALECs and BellSouth could jointly  
29           review certain metric reporting issues with Commission oversight, in most cases  
30           an unbiased third-party would be the best choice as an auditor.

1 **ISSUE 29: WHAT IS THE APPROPRIATE DEFINITION OF "AFFILIATE"**  
 2 **FOR THE PURPOSE OF THE PERFORMANCE ASSESSMENT PLAN?**

3  
 4 **Q. HOW SHOULD "AFFILIATE" BE DEFINED?**

5 A. The affiliate reporting should include all affiliates that purchase wholesale services  
 6 from BellSouth and the term affiliate should be defined pursuant to the  
 7 Telecommunications Act definition. Section 3(1) of the Communications Act  
 8 defines affiliate as follows: "The term 'affiliate' means a person that (directly or  
 9 indirectly) owns or controls, is owned or controlled by, or is under common  
 10 ownership or control with, another person. For purposes of this paragraph, the  
 11 term "own" means to own an equity interest (or the equivalent thereof) of more  
 12 than 10%." Such affiliate reporting was ordered by the Pennsylvania Public  
 13 Utility Commission in its December 31, 1999 performance standards and  
 14 remedies order.

15 **ISSUE 30(a): SHOULD BELLSOUTH BE REQUIRED TO PROVIDE**  
 16 **"AFFILIATE" DATA AS IT RELATES TO THE PERFORMANCE**  
 17 **ASSESSMENT PLAN?**

18  
 19 **Q. SHOULD BELLSOUTH BE REQUIRED TO PROVIDE AFFILIATE**  
 20 **DATA?**

21  
 22 A. Yes. BellSouth should report monthly any affiliate activity for the metrics adopted  
 23 in this proceeding. The affiliate information should be reported separately by  
 24 each affiliate (data, wireless, future long distance, or other) with activity in the  
 25 metric category. BellSouth may exclude the number of affiliate observations  
 26 from data reported to individual ALECs but not in data reported to the  
 27 Commission.

28 **ISSUE 30(b): IF SO, HOW SHOULD DATA RELATED TO BELLSOUTH**  
 29 **AFFILIATES BE HANDLED FOR PURPOSES OF (1) MEASUREMENT**  
 30 **REPORTING? (2) TIER 1 COMPLIANCE? and (3) TIER 2 COMPLIANCE?**

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26

**Q. HOW SHOULD AFFILIATE DATA BE HANDLED FOR PURPOSES OF MEASUREMENT REPORTING, TIER 1 COMPLIANCE AND TIER 2 COMPLIANCE?**

A. ALECs propose that data be reported for several months before a decision is made on giving up set benchmarks for parity comparisons with the ALEC. BellSouth's affiliates may have different service delivery plans (such as only ordering virtual collocation, only ordering line sharing not DSL-capable unbundled loops, or only ordering high-capacity loops) or not have enough activity yet to make it an appropriate and dependable analog for parity comparisons. If the affiliate is deemed in a future collaborative as an appropriate retail analog, ALECs may choose either to adopt a standard of parity with the affiliate or choose to use an existing benchmark, perhaps updated periodically based on historical affiliate treatment during the study period.

**Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

A. Comprehensive performance measures are critical to ensure that ALECs receive parity service from BellSouth and a meaningful opportunity to compete. ALECs request the Commission to adopt the additional measures they have proposed, in addition to reviewing BellSouth's SQM periodically to ensure that it covers all areas needed to sustain competition. ALECs further request the Commission to ensure that the measures already in BellSouth's SQM are properly defined, that they are appropriately disaggregated, and that suitable benchmarks are put in place where retail analogs do not exist. Finally, ALECs request that appropriate auditing mechanisms and requirements regarding affiliate data be adopted.

1 Q. DOES THAT CONCLUDE YOUR TESTIMONY?

2 A. Yes, at this time.

1 **Q. PLEASE STATE YOUR NAME.**

2 **A. My name is Karen Kinard.**

3

4 **Q. DID YOU FILE DIRECT TESTIMONY IN THIS PROCEEDING ON**  
5 **BEHALF OF THE ALEC COALITION?**

6 **A. Yes.**

7

8 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

9 **A. The purpose of my testimony is to respond to the Direct Testimony of**  
10 **BellSouth witnesses Coon and Cox relating to Issues A, 1(a), 1(b), 24(a), 25,**  
11 **27(a), 30(a) and 30(b).**

12

13 **ISSUE A: HOW SHOULD THE RESULTS OF KPMG'S REVIEW OF**  
14 **BELLSOUTH PERFORMANCE MEASURES BE INCORPORATED INTO**  
15 **THIS PROCEEDING?**

16

17 **Q. MR. COON PROPOSES THAT THE RESULTS OF KPMG'S**  
18 **PERFORMANCE MEASUREMENT REVIEW BE ADDRESSED IN**  
19 **THIS PROCEEDING IF IT IS COMPLETED IN TIME FOR THE**  
20 **HEARING, BUT OTHERWISE HE PROPOSES THAT THE REVIEW**  
21 **BE ADDRESSED AS PART OF THE NEXT PERFORMANCE**  
22 **ASSESSMENT PLAN REVIEW CYCLE. HOW DO YOU RESPOND?**

1 A. I agree that KPMG's performance measurement review should be addressed  
2 in the hearing in this proceeding if possible. If the review is not completed  
3 by then, however, the ALEC Coalition would not want to foreclose the  
4 possibility of addressing KPMG's conclusions before the end of six months.  
5 Particularly if KPMG recommends substantial changes, no purpose would be  
6 served by waiting six months to address them.

7

8 **ISSUE 1(a): WHAT ARE THE APPROPRIATE SERVICE QUALITY**  
9 **MEASURES TO BE REPORTED BY BELLSOUTH?**

10

11 **Q. WHAT MEASURES SHOULD BE ADDED TO BELLSOUTH'S**  
12 **REVISED SQM?**

13 A. BellSouth included the additional measures ordered by the Georgia Public  
14 Service Commission (listed in my Direct Testimony at page 6), except for  
15 Percent Completions/Attempts without Notice or less than 24 hours notice,  
16 BFRs processed in 30 business days, and BFR Quotes provided in X days.  
17 Otherwise, BellSouth did not add any of the other metrics proposed in  
18 Exhibit KK-4 and pages 10-24 of my Direct Testimony, including the Service  
19 Order Accuracy measure that also exists in Georgia. For the reasons  
20 discussed in my Direct Testimony, those measures also should be included in  
21 the SQM.

22

1 **ISSUE 1(b): WHAT ARE THE APPROPRIATE BUSINESS RULES,**  
2 **EXCLUSIONS, CALCULATIONS, AND LEVELS OF DISAGGREGATION**  
3 **AND PERFORMANCE STANDARDS FOR EACH?**

4  
5 **Q. WHAT ADDITIONAL COMMENTS DO YOU HAVE CONCERNING**  
6 **THE REVISED SQM?**

7 A. For the most part, the comments expressed in the body of my Direct  
8 Testimony and in Exhibits KK-1, KK-2 and KK-3 remain the same. I have  
9 noted additional points concerning BellSouth's revised measures in Exhibit  
10 KK-5 attached to this testimony.

11  
12 **Q. DO YOU HAVE ANY ADDITIONAL COMMENTS REGARDING**  
13 **BELLSOUTH'S DISAGGREGATION AND RETAIL ANALGS?**

14 A. For the most part, the comments expressed in the body of my Direct  
15 Testimony and in my Exhibits, KK-2 and KK-3 remain the same. There are a  
16 few areas that I would like to highlight for the Commission.

17  
18 Dispatch/Non-Dispatch

19 For many of its provisioning and maintenance and repair measures,  
20 BellSouth inappropriately compares UNE Loops to retail dispatch services.  
21 Physical work done in a central office, which is all that is required of many  
22 UNE migration orders, should not be compared to work done in the field,  
23 including at the customer premises. If the provisioning of a UNE loop

1 required field work as well as central office work, then of course it would be  
2 classified as a dispatch out. Provisioning and repair measures should be  
3 divided into three categories: 1) Switch-based orders, 2) central office or  
4 “dispatch in,” and 3) field work or “dispatch out.”

5

6 Loop Disaggregation

7 A few additional points concerning loop disaggregation should be  
8 noted:

9 \* DS1 loops should not be included with DS3 loops because  
10 BellSouth has different intervals for DS1 and DS3 loops.

11 \* The various types of xDSL services likewise should be  
12 disaggregated to detect discrimination in the DLECs’ chosen  
13 mode of service delivery or problems in checking facilities for  
14 certain types of DSL products.

15 \* Line splitting should be disaggregated from line sharing in  
16 order to detect discrimination when the ILEC is not the voice  
17 provider on the loop.

18

19 EEL Migration Benchmarks

20 e.spire has submitted testimony describing problems concerning  
21 converting special access circuits to EELs. The standard interval for  
22 migrations from special access to EELs should be 95% within 10 days from  
23 receipt of an error-free request for conversion. The benchmark for firm order

1 confirmation timeliness and completion notices should be 95% in 5 hours for  
2 electronic and 24 hours for manual for each metric. e.spire also is proposing  
3 a new measure of how quickly BellSouth would change billing rates from  
4 special access to EELs charges. The proposed benchmark for this measure is  
5 95% within 30 days from receipt of an error-free order.

6

7 Retail Analogs

8 BellSouth offers as its retail analog for “UNE Combo Other” the  
9 combination of retail residence, business and design dispatch. Obviously a  
10 combination of every service offered by BellSouth is not the appropriate  
11 analog for any service.

12

13 **ISSUE 24(a): SHOULD PERIODIC THIRD-PARTY AUDITS OF**  
14 **PERFORMANCE ASSESSMENT PLAN DATA AND REPORTS BE**  
15 **REQUIRED?**

16

17 **Q. MR. COON STATES THAT AUDITS SHOULD BE REGIONAL IN**  
18 **NATURE. DO YOU AGREE?**

19 **A.** No. First, many of BellSouth’s processes, such as provisioning, repair and  
20 collocation, are handled at the state level. Further, BellSouth states that the  
21 Commission should be involved in determining the scope of the audit, but  
22 such involvement would be difficult if not impossible to implement on a  
23 regional basis.

1 **ISSUE 25: IF PERIODIC THIRD-PARTY AUDITS ARE REQUIRED, WHO**  
2 **SHOULD BE REQUIRED TO PAY THE COST OF THE AUDITS?**

3

4 **Q. MR. COON PROPOSES THAT BELLSOUTH AND ALECS SPLIT**  
5 **AUDIT COSTS. DO YOU AGREE?**

6 A. No. As I stated in my Direct Testimony, BellSouth should bear the audit  
7 costs. Audits are an integral part of a performance measurement plan  
8 designed to ensure BellSouth's compliance with the Telecommunications Act  
9 of 1996 ("Act"). It is therefore appropriate for BellSouth to pay such costs,  
10 as Staff has proposed.

11

12 **ISSUE 27(a): SHOULD AN ALEC HAVE THE RIGHT TO AUDIT OR**  
13 **REQUEST A REVIEW BY BELLSOUTH FOR ONE OR MORE SELECTED**  
14 **MEASURES WHEN IT HAS REASON TO BELIEVE THE DATA**  
15 **COLLECTED FOR A MEASURE IS FLAWED OR THE REPORT**  
16 **CRITERIA FOR THE MEASURE IS NOT BEING ADHERED TO?**

17

18 **Q. MR. COON CONTENDS THAT BELLSOUTH SHOULD NOT BE**  
19 **REQUIRED TO PROVIDE MINI-AUDITS BECAUSE IT PROVIDES**  
20 **ACCESS TO RAW DATA. PLEASE COMMENT.**

21 A. Access to raw data does not obviate the need for mini-audits. For example, if  
22 an ALEC has reason to believe that BellSouth's method of capturing the data

1 is flawed, the only way it can root out the problem is through an audit.

2 Access to corrupted raw data would be of no use in resolving the problem.

3

4 **ISSUE 30(a): SHOULD BELLSOUTH BE REQUIRED TO PROVIDE**  
5 **“AFFILIATE” DATA AS IT RELATES TO THE PERFORMANCE**  
6 **ASSESSMENT PLAN?**

7

8 **Q. FOR WHAT AFFILIATES SHOULD BELLSOUTH PROVIDE**  
9 **PERFORMANCE MEASUREMENT DATA?**

10 A. BellSouth should include all affiliates that buy interconnection or unbundled  
11 elements or that resell BellSouth’s services. Such affiliates would include  
12 any future BellSouth long distance affiliate, to ensure it is not being given  
13 more favorable treatment than BellSouth’s combined local and long distance  
14 competitors. Any affiliate, as affiliate is defined by the Communications Act,  
15 that buys services similar to those purchased by ALECs should be included.

16

17 **ISSUE 30(b): IF SO, HOW SHOULD DATA RELATED TO BELLSOUTH**  
18 **AFFILIATES BE HANDLED FOR PURPOSES OF (1) MEASUREMENT**  
19 **REPORTING? (2) TIER 1 COMPLIANCE? and (3) TIER 2 COMPLIANCE?**

20

21 **Q. WHY MUST BELLSOUTH AFFILIATE DATA BE REPORTED?**

22 A. The Act requires BellSouth to provide interconnection with its network “that  
23 is at least equal in quality to that provided by [BellSouth] to itself or to any

1 subsidiary, affiliate, or any other party to which [BellSouth] provides  
 2 interconnection.” Act, § 251(c)(2)(C). The Act also requires BellSouth to  
 3 provide nondiscriminatory access to network elements. Act, § 251(c)(3).  
 4 The FCC has interpreted this requirement to mean that the quality of a UNE  
 5 and the quality of access to the UNE that an incumbent local exchange carrier  
 6 provides to a requesting carrier must be the same for all requesting carriers.  
 7 *See* 51 C.F.R. § 311(a).

8 The FCC has confirmed that for Section 271 purposes, a Bell  
 9 Operating Company must establish that for functions that it provides ALECs  
 10 that are analogous to the functions it provides itself, the BOC must provide  
 11 access that is substantially the same as the level of access the BOC provides  
 12 to itself, its customers or its affiliates. *In re: Application by Bell Atlantic*  
 13 *New York for Authorization Under Section 271 of the Communication Act to*  
 14 *Provide In-Region, InterLATA Service in New York*, CC Docket No. 99-295,  
 15 Memorandum Opinion and Order (rel Dec. 22, 1999), ¶ 44 (“Bell Atlantic  
 16 New York Order”).

17  
 18 **Q. MS. COX CONTENDS THAT THE FCC HAS NOT LOOKED TO**  
 19 **AFFILIATE DATA TO ASSESS ILEC PERFORMANCE. IS THAT A**  
 20 **FAIR ASSESSMENT?**

21 A. No. Ms. Cox contends that the FCC only looks to performance data that a  
 22 BOC provides to itself and its retail customers to assess parity, based on the  
 23 FCC’s analysis in the Bell Atlantic New York Order. The FCC does not state

1           that it would not consider affiliate data, and there is no basis for believing the  
2           FCC would not consider such data if available. The New York PSC had not  
3           addressed affiliate reporting when it first developed its carrier-to-carrier  
4           guidelines and New York CLECs did not press the issue because Verizon had  
5           virtually no affiliates with which they competed. Since then, Verizon has  
6           entered the long distance business in New York through two affiliates and  
7           has established a separate data affiliate. In fact, recently the New York  
8           Commission has required that Verizon report its affiliate data separately from  
9           CLEC data for study on how it will be used in determining parity in the  
10          future.

11                     In some limited cases for line sharing metrics, Verizon's data affiliate  
12           already is designated by the PSC for use in determining parity performance.  
13           Specifically, in the Case 97 C 0139 *Order Adopting Revisions to Inter-*  
14           *carrier Service Quality Guidelines*, issued and effective December 15, 2000,  
15           the New York Public Service Commission stated:

16                     To provide meaningful information on parity  
17                     performance of the ILEC, the ILEC affiliate data should  
18                     be reported separately. That is if affiliate data is reported  
19                     together all other competitor data, the ILEC performance  
20                     to competitors may be masked. As these data may have  
21                     competitive significance, the separately reported affiliate  
22                     data should be provided to the Carrier Working Group

1 through the existing protective order under which data are  
2 shared.

3  
4 The Pennsylvania PUC agreed with the ALECs' broader definition of  
5 affiliate when Verizon tried to limit reporting to ALEC affiliates that had  
6 entered into interconnection agreements with it:

7 As noted by the ALJs, BA-PA does not have any  
8 affiliates operating under interconnection agreements,  
9 therefore, we find that BA-PA's definition actually  
10 provides for no reporting at all. This proceeding must  
11 provide this Commission, BA-PA, and the CLEC  
12 community with sufficient information upon which to  
13 objectively measure the delivery of nondiscriminatory  
14 access to CLECs. In order for this metric to provide  
15 any meaningful measurement, it must include a broader  
16 definition than that proposed by BA-PA. We agree  
17 with the ALJs that it is essential that BA-PA report on  
18 the level of service it provides to its affiliates, and we  
19 shall adopt the recommendation of the ALJs on this  
20 issue. BA-PA shall report the service quality delivered  
21 to all BA-PA affiliates and subsidiaries (CLEC and  
22 non-CLEC) which order services, UNEs, or  
23 interconnection from BA-PA.

24

1 Pacific Bell and Verizon California (legacy GTE) have been  
2 voluntarily reporting all affiliate data for some time. The metric report  
3 structure for the California Joint Partial Settlement metrics lists under  
4 reporting structure for the various metrics “Individual CLECS, CLECs in the  
5 aggregate, By ILEC (if analog applies) and *ILEC affiliates*.” (Emphasis  
6 added).

7  
8 **Q. MS. COX STATES THAT A BELLSOUTH AFFILIATE’S DATA**  
9 **WILL BE INCLUDED IN AGGREGATE ALEC DATA. IS SUCH**  
10 **INCLUSION APPROPRIATE?**

11 A. No. BellSouth has an incentive to discriminate in favor of its affiliate. To  
12 include the affiliate’s data with other ALECs’ data potentially could improve  
13 BellSouth’s overall performance, thus enabling BellSouth to benefit from  
14 discriminatory treatment. Further, in its response to the CLEC Coalition’s  
15 motion for Clarification and Reconsideration in Georgia in Docket 7892-U,  
16 the Commission found that “BellSouth shall not include its Affiliate data in  
17 the remedy calculation as it applies to industry-level remedies.”

18  
19 **Q. MS. COX STATES THAT THE COMMISSION SHOULD NOT**  
20 **UNNECESSARILY COMPLICATE THE PLAN BY ATTEMPTING**  
21 **PREMATURELY TO TIE BELLSOUTH AFFILIATE**  
22 **PERFORMANCE TO THE PERFORMANCE ASSESSMENT PLAN**  
23 **BASED ON CONCERNS ABOUT THE HYPOTHETICAL**

1           **OCCURRENCE OF FUTURE DISCRIMINATION.” PLEASE**  
2           **RESPOND.**

3    A.    First, it is difficult to understand how adding affiliate reporting would  
4           complicate the plan. Secondly, BellSouth’s affiliates provide a powerful  
5           means to mask discrimination, and thus ALECs strongly disagree with  
6           BellSouth’s contention that tying BellSouth-affiliate performance to the  
7           Performance Assessment Plan is not needed. Finally, the ALECs do not  
8           understand BellSouth’s dismissal of “concerns about the hypothetical  
9           occurrence of future discrimination.” All future discrimination is  
10          hypothetical. However, this Commission has decided to establish  
11          mechanisms to proactively monitor for discrimination and to assess penalties  
12          for non-compliance. The treatment received by BellSouth affiliates is a  
13          critical aspect of any such performance plan.

14  
15    **Q.    DOES THAT CONCLUDE YOUR REBUTTAL TESTIMONY?**

16    A.    Yes.

1 BY MS. McNULTY:

2 Q With your Direct testimony, do you have four exhibits,  
3 KK-1 through KK-4?

4 A Yes, I do.

5 Q With your Rebuttal testimony do you have one exhibit  
6 identified as KK-5?

7 A Yes, I do.

8 MS. McNULTY: Mr. Chairman, at this time I would ask  
9 that Ms. Kinard's exhibits be marked for identification.

10 CHAIRMAN JACOBS: We'll mark composite exhibit -- we'll  
11 mark as composite Exhibit 14 the exhibits attached to  
12 Ms. Kinard's testimony, KK-1, KK-2, and Rebuttal, KK-3, 4, and 5.

13 MS. McNULTY: I believe, 3 and 4 are attached to her  
14 Direct testimony, and KK-5 is attached to her Rebuttal.

15 CHAIRMAN JACOBS: Correct.

16 MS. McNULTY: Thank you.

17 (Exhibit 14 marked for identification.)

18 BY MS. McNULTY:

19 Q Ms. Kinard, at this time would you please provide a  
20 brief summary of your testimony?

21 A Yes, thank you.

22 First of all, I'd like to thank the Commission for  
23 accommodating my schedule of having to appear in another hearing  
24 addressing performance measures this week.

25 Performance metrics and self-executing remedies are

1 crucial to ensuring that local exchange markets remain  
2 irreversibly open to competition. Without them, any inroads made  
3 into the exchange and exchange access market through  
4 implementation of the Telecommunications Acts 251 requirements  
5 can easily crumple BellSouth's best behavior near 271 application  
6 time can easily retrench.

7           Adoption of comprehensive metrics, thorough annual  
8 audits of the accuracy of BellSouth's self-reporting and  
9 meaningful self-executing remedies, will be one of the most  
10 significant actions this Commission can take. These steps can  
11 help guarantee that the PSC's hard work in ensuring Florida  
12 customers have a choice in telecommunications providers does not  
13 unravel. It's important that we get this right. It's important  
14 that you keep a forum open for fine-tuning and honing this  
15 valuable tool.

16           Spending the last three years in numerous performance  
17 measures collaboratives around the country, I have learned that  
18 this activity is always a work in progress. As competitors gain  
19 more market experience, we find that metrics we never thought of  
20 before are necessary. All the new metrics levels of  
21 disaggregation improve benchmark proposals brought into this  
22 proceeding by the ALECs were borne of their real market  
23 experience.

24           As we've discovered, the original metrics of LCUG,  
25 which was the Local Competition Users Group, and other earlier

1 proposals, had some gaping holes. For example, they allowed  
2 delivery of nonworking loops to be considered on time. They  
3 measured how fast the help desk for ALECs answered the phone, but  
4 not how long it took for the ALEC to get a substantive answer  
5 that was the lack of which was holding up their placement of  
6 orders.

7           They allowed customer not-ready situations to be  
8 excluded from missed appointments, even when that customer  
9 not-ready situation occurred because the ALEC had not received a  
10 confirmation of a due date or received that confirmation on the  
11 day of delivery.

12           They did not include disaggregations for new products,  
13 such as line splitting or converting special access to EELs,  
14 Enhanced Extended Loop combinations. They measured the dollar  
15 amount of billing errors, but did not factor into that, that the  
16 ILEC could hold back an adjustment for months on end to make the  
17 billing accuracy performance look better.

18           They assumed that order status notices, confirmations,  
19 rejections, provisioning and billing completions would always be  
20 received and the issue was only how quickly they would be  
21 received. They did not advantage that many of them would not  
22 come at all and this would not be captured in the interval  
23 metrics.

24           BellSouth will try to make a case that the new metrics  
25 and new levels of disaggregation ALECs are requesting isn't

1 necessary. But my testimony, enforced by the operational  
2 testimony you will hear from other ALECs, shows that the  
3 additional metrics and disaggregations proposed in this  
4 proceeding are based on the reality of facing roadblocks that can  
5 be thrown in the way of competition. They are based on the  
6 reality of needing to see like-to-like comparisons for  
7 determining parity.

8 Covad, as you will read and hear, is concerned that  
9 there are different xDSL product intervals, and it wants to see  
10 them disaggregated so it can make the right choice for its  
11 customers. Covad is also having problems in obtaining loop  
12 makeup information in a timely manner because of BellSouth's  
13 intervals.

14 It is also finding that it takes a long time to  
15 condition loops and that loops are often delivered that do not  
16 pass acceptance testing. Espire is receiving unreasonably long  
17 intervals and converting special access to EELs. Mpower is  
18 experiencing long hold times in calling the LCSC desk to help  
19 CLECs in delays in receiving full and correct answers to its help  
20 desk questions.

21 Real market experience provides the impetus for new  
22 metrics and improvements to old ones. ALECs hope that over time  
23 the need for changes will decline as we get all the bases  
24 covered, but check back with me after Worldcom launches its first  
25 residential market activity in BellSouth territory in May in

1 Georgia; no doubt, we will learn much more about the strengths  
2 and weaknesses of BellSouth's metric plan.

3 MS. McNULTY: At this time, Worldcom tenders the  
4 witness for cross examination.

5 CHAIRMAN JACOBS: Very well. We'll go with cross from  
6 the ALECs first. Mr. Prescott, do you have any cross?

7 MR. PRESCOTT: No, sir.

8 CHAIRMAN JACOBS: Very well. No cross? Mr. Carver.

9 MR. CARVER: Thank you, Mr. Chairman.

10 CROSS EXAMINATION

11 BY MR. CARVER:

12 Q Good afternoon, Ms. Kinard. My name is Phil Carver,  
13 and I represent BellSouth.

14 A Good afternoon.

15 Q I have a number of questions for you. And unless I  
16 specify otherwise, all of them have to do with specifically the  
17 ALEC plan that you support as opposed to BellSouth's or Staff's,  
18 so I'll just say that up front so I don't have to keep --

19 A Can you speak a little louder? I'm sorry.

20 Q Okay. Can you hear me now?

21 A Yes.

22 Q Okay. I was just saying, as sort of a point of  
23 clarification, that I have a number of questions and they all  
24 relate to the ALEC plan. So, unless I specify otherwise, that's  
25 what I'm asking you.

1 My first question is if an ALEC submitted a single  
2 order, that would likely generate activity in more than one  
3 submetric category, correct?

4 A Yes, that would create many opportunities where the  
5 customer might be impacted by activity on that order.

6 Q Okay. And at the same time you would anticipate that  
7 some ALECs would not generate any activity in some submetrics in  
8 a given month, correct?

9 A Yes, I would think that's a reasonable assumption.

10 Q And some submetrics would probably tend to have low  
11 volumes of activity across the board. And when I say across the  
12 board, I mean, considering all ALECs, correct?

13 A That's probably true.

14 Q For example, in general, the repair measurements might  
15 tend to have lower volume than, say, the ordering or pre-ordering  
16 measurements; would you agree?

17 A I would hope so.

18 Q Now, to the extent there are whatever number of repair  
19 measurements that you have, under your proposal, this number  
20 would be disaggregated by geography, correct?

21 A Yes.

22 Q And then we would take that number and we would  
23 disaggregate it by product type?

24 A Yes.

25 Q And then we would also disaggregate by volume?

1           A     To the extent that you have different intervals for  
2 different volumes, we would need to do that, yes.

3           Q     And you would disaggregate for dispatch status,  
4 correct?

5           A     Yes. To the extent that some processes take longer  
6 than others and we're judging parity, we would need to do that.

7           Q     Are there any other -- I'm sorry.

8                   CHAIRMAN JACOBS: Do I understand you to say that your  
9 disaggregation for volume would only track where there's a  
10 different interval?

11                   THE WITNESS: Yes. If they had the same confirmation  
12 interval, no matter how many trunks we ordered, then we would  
13 need disaggregation. But if they say so many days from one to 10  
14 trunks, so many days to 10 to 20, then we need the  
15 disaggregation.

16                   CHAIRMAN JACOBS: Thank you.

17 BY MR. CARVER:

18           Q     And I believe, you said that you would also  
19 disaggregate by dispatch type?

20           A     Yes, dispatch from other types of repairs that might  
21 have a shorter interval.

22           Q     Are there any other of your disaggregation categories  
23 that would apply to repair measurements?

24           A     To repair measurements? They're mostly by the process,  
25 whether it's dispatch in or dispatch out.

1 Q Okay.

2 A Whether it's a software change in the central office.

3 Q So, if we took, just in general, this relatively small  
4 number of repair activities or incidents in a given month, and we  
5 take that universe and then we divide it by product type and then  
6 we divide it by geography and then we divide that by volume and  
7 then we divide that by dispatch status, we're going to end up  
8 with some submetrics that have very small numbers in them, aren't  
9 we?

10 A Yes. Just as when you do your statistical testing down  
11 to the end-office level in time of day, you get a lot of zeros  
12 and small numbers, too, yes.

13 Q And -- well, you mentioned zero. It's certainly  
14 possible you could have some submetrics for a particular ALEC  
15 with one event or two events or three events for the given month?

16 A You could.

17 Q Moving to a slightly different area, every benchmark  
18 that the ALECs propose in this proceeding is 95% or greater,  
19 correct?

20 A I would think, for the most part, there might be some  
21 answer times where we'll accept the state standard that might be  
22 80% or whatever, but mostly they are 95% or higher.

23 Q Okay. In your deposition, I believe, you mentioned  
24 some OSDA speed to answer performance, but I checked that one  
25 and, I believe, that one's 95%.

1 A Okay.

2 Q So -- and that's in Exhibit KK-1, the exhibit to your  
3 testimony.

4 A Okay.

5 Q Other than that, are they all 95%? Or, I guess, I  
6 should say including that, they are all 95%?

7 A Pretty much so. It's usually what we've been getting  
8 in New York and Texas.

9 Q Okay. We'll get back to that in a moment, but let me  
10 ask you, first of all, we've established that 95% is the lowest  
11 benchmark. In some instances, the benchmark you've said is 100%,  
12 correct?

13 A There's probably some cases that might be collocation.  
14 You're talking about in the interval so long as we did say 100%.

15 Q So, essentially, that's perfection; in other words, any  
16 miss would be a failure?

17 A Yes, but we consider those intervals very long. So, we  
18 think you've got a good chance at perfection at them.

19 Q Okay. For example, average recovery time under your  
20 plan 100% of those would have to be resolved in two hours,  
21 correct?

22 A The recovering time, this is for BellSouth's errors and  
23 a hot cut. So, yes, we would have a strict interval for that,  
24 because that caused the outage in the first place by an early cut  
25 or some other problem on the hot cut.

1 Q Now, likewise, if we were to look at billing errors  
2 corrected in a certain number of days, you have some benchmarks  
3 in that category also that are 100%, don't you?

4 A I believe, in the accuracy area we do.

5 Q Now, you do not have the UNE sort of analysis or study  
6 that you've done to support the conclusion that 95% is the  
7 minimum number that would allow ALECs a meaningful opportunity  
8 to compete; is that correct?

9 A No, we've not done a study of that, but we do not think  
10 it's an unreasonable request when you look at what other ILECs  
11 have committed. We would be willing to take a lower percentage  
12 standard, if the ILEC proposed a cutting-edge interval, a shorter  
13 interval, but I don't see the intervals being shorter. In some  
14 cases, they're longer than other ILECs have for BellSouth.

15 Q Now, I believe, you said in a response to an earlier  
16 question that in setting these benchmarks at 95% or higher, to  
17 some extent, you relied on what Texas and New York did, correct?

18 A Yes.

19 Q You did not rely at all on what the Georgia Commission  
20 recently did, did you?

21 A No, I did not.

22 Q And, in fact, in the Georgia plan almost half of the  
23 benchmarks are below 95%, aren't they?

24 A I didn't count them up, but I'll accept that they are.

25 Q Okay. So, if you're basing your proposal on Texas or

1 New York and you're not advocating Georgia, is it fair to say  
2 that you're commending to this Commission whatever state  
3 decisions are most favorable to the ALECs?

4 A Well, we're using to show that other ALECs can meet  
5 these standards. We have questions on why BellSouth would be  
6 different and not being able to meet 95% standards, and we  
7 advocated these standards to the Georgia Commission.

8 Q And Georgia rejected those?

9 A They rejected some of them; some of them they adopted.

10 Q Okay. So, my question, again, is if some states are at  
11 95% or higher and some states are below 95%, you've told me that  
12 you don't have any certain empirical study that would show what's  
13 really necessary. You're simply basing your proposal on what  
14 other states have done. So, my question is are you just  
15 advocating the states that are most favorable to the ALECs?

16 A I think, I'm advocating where the majority of states  
17 are. I think, Georgia's in the minority, if 50% of its  
18 benchmarks are less than 95%.

19 Q Well, of the -- other than New York or Texas, are there  
20 any other states in the country that have set as many benchmarks  
21 at 95% or higher?

22 A I believe, the Ameritech region under SBC and PacBell  
23 region, most of their intervals are 95% or higher.

24 Q All of them aren't, though, are they?

25 A There again, I think, maybe one or two are not.

1 Q I have a few questions about correlation, correlation  
2 of measures. I believe, in your deposition, you said that the  
3 ILECs define correlated measures as occurring in a situation  
4 where missing one measurement necessarily means that another  
5 measurement would be missed as well; is that correct?

6 A I believe that is how you view correlation, yes.

7 Q Okay. And is that a workable definition from your  
8 perspective?

9 A Yes.

10 Q And I believe, you also said in your deposition that  
11 the time measurement and the average interval measurement are  
12 correlated; is that correct?

13 A I said that you need to look at both to determine  
14 parity that you could be making your on-time interval, but the  
15 due dates are longer for the ALEC than for the ILEC, so you need  
16 to look at average interval and you need to look at on time. And  
17 I would not be opposed in a remedy plan, speaking for Worldcom,  
18 to those being tied together. If you miss one or the other for,  
19 say, a UNE-P product or separately for a loop product, you would  
20 pay one remedy, not a double remedy.

21 Q Okay. I think, you're getting a little bit ahead of  
22 me, so let's take this one step at a time. First of all, you did  
23 state in your deposition that these two measures are correlated,  
24 correct?

25 A By what I meant by correlating and looking at

1 disparity.

2 Q Okay. And just to be clear, I'm reading from Page 28  
3 of your deposition, Line 4. Your statement is, "and when I talk  
4 about correlation with the average and percent on time, I see a  
5 correlation there." Do you remember making that statement?

6 A Yeah, I see a correlation. I don't know that it's  
7 necessarily that if you miss one you can miss the other, because  
8 you can make on time and you can miss average interval.

9 Q Okay. In your suggestion for how to deal with this  
10 particular situation where you see a correlation is that you  
11 would want both measures to remain in the plan, but there would  
12 only be a penalty for one of the two; is that correct?

13 A Yes.

14 Q Now, as a general matter, if the Commission were to  
15 find that other measures were correlated, would you recommend  
16 that they make similar adjustments to avoid duplicate payments?

17 A Yes, if they're correlated in that way. I think, in  
18 some ways, you have to look at the activity in different ways to  
19 pick up where there's disparity. It's sort of looking for a  
20 blemish on an apple. If you look at just the top side, you might  
21 miss the blemish, but I don't see that as meaning that you need  
22 to pay for every angle. You look at the situation. So, I think,  
23 there are some areas where you need to look at several metrics  
24 together. I think, there's some in the hot cut area that you'd  
25 look at together. And if you missed one or a multiple, there

1 would just be one penalty level.

2 Q So, if I understand your testimony correctly, what  
3 you're saying that is you believe it would be appropriate to have  
4 some measures but not to have penalties associated with them, at  
5 least not when there's a correlation situation; is that correct?

6 A I think, you have to look at them in assessing the  
7 penalty. I wouldn't leave them out of a penalty plan, but you  
8 can group them together and have one penalty level related to  
9 them.

10 Q Okay. So, that would be --

11 A And this is a Worldcom opinion. I'm not the remedy  
12 witness.

13 Q Okay. Let me ask you if you could do something for me  
14 just so the record's clear. I'm trying to ask questions that can  
15 be answered with a yes or no. So, if you could give me a yes or  
16 no before you give me an explanation, I would appreciate it,  
17 because sometimes I'm listening to your answer, and I'm not quite  
18 sure whether you're going to conclude with a yes or no, so could  
19 you do that for me, please?

20 A Well, if I don't think the yes or no gives the full  
21 justification for the answer, I may need to clarify it.

22 Q Oh, absolutely. And I'm not asking you to skip any  
23 explanation. I'm just asking you to give me a yes or no before  
24 you explain so we can be clear what your answer is.

25 A Okay.

1 Q Let's assume that an ILEC places an order and it goes  
2 through pre-ordering and the ordering process without a problem.  
3 When it gets to the provisioning part of the process, however,  
4 BellSouth finds that there are no facilities in place so the  
5 order can't be provisioned.

6 Now, I want you to assume that this causes BellSouth to  
7 fail the mean held order interval measurement. If this were the  
8 case, there would necessarily have to be a failure of the order  
9 completion interval also, wouldn't there?

10 A The order completion? Well, if we're judging parity  
11 and the orders are held as much for you as they're held for us,  
12 then it wouldn't necessarily mean you would miss that. So, no, I  
13 don't --

14 Q Okay. I think, you changed my question a little bit,  
15 so let me go back.

16 A Okay.

17 Q My question was assume that because we have no  
18 facilities available that we fail that measure, that we hold that  
19 order too long and we fail that measure, okay? So, my question  
20 is if we fail that measure, we would necessarily also fail the  
21 order interval completion measure. I've said that backwards --  
22 order completion interval measure, correct?

23 A No. I'm saying you might not fail the average order  
24 completion interval if it's a parity metric as, I believe, it is  
25 in your territory if you are also holding orders for yourself

1 because of lack of facilities.

2 Q Well, if we were holding orders for ourself because of  
3 lack of facility, we wouldn't have failed the first measure,  
4 would we have?

5 A Okay. Now, I understand your question. So, you're  
6 saying you're holding -- you fail that metric and you're holding  
7 it the same amount of time for us as for yourself.

8 Q Yes. I'm saying we failed the mean held interval  
9 measure, we would necessarily have to fail order completion  
10 interval as well. That's the question, correct?

11 A Yes. If you hold it the same amount of time for both  
12 of us, I think, the held order is done at the end of each month,  
13 and the interval is done when the order is completed.

14 Q Okay. So, if we fail both the mean held order interval  
15 and the order completion interval measure, then we would also  
16 necessarily fail the total service order cycle time, wouldn't we?

17 A I believe so. The total service cycle time is not a  
18 metric we're pushing, though, it's just one you have.

19 Q But it is in the plan.

20 A It's in your plan.

21 CHAIRMAN JACOBS: Mr. Carver, are we near a good  
22 breaking point?

23 MR. CARVER: I have probably -- I have probably five  
24 more minutes in this particular line.

25 CHAIRMAN JACOBS: Okay.

1 BY MR. CARVER:

2 Q Now, under the ALEC plan, these three measures that  
3 we've been discussing, BellSouth would have to pay a penalty for  
4 each of these three failures, correct?

5 A Yes, under -- as it's proposed now.

6 Q Okay. So, this might be another one of those examples  
7 where under the proposal that you've made today, the Commission  
8 should look at the correlation and decide that there would be a  
9 penalty for only one of those three, correct?

10 A But again, it would be a situation where we'd look at  
11 all three together but maybe just assess one remedy rather than  
12 one for each one.

13 Q Okay. Let's assume -- moving to a different situation,  
14 let's assume that a maintenance appointment is missed. Now, this  
15 would be a failure of the missed repair appointment measure,  
16 correct?

17 A I'm sorry, could you repeat the first part again?

18 Q Yes. Let's assume that a particular maintenance  
19 appointment is missed. This would be a failure of the missed  
20 repair appointment measure, correct?

21 A Yes.

22 Q Okay. And if the substitute appointment were scheduled  
23 for 24 hours later or, let's say, for some reason it couldn't be  
24 scheduled the same day, then this would necessarily also cause a  
25 failure of the providing service in less than 24 hours metric,

1 correct?

2 A Yes.

3 Q And again, under the ALEC plan, two penalties would be  
4 due for these failures?

5 A Again, we would have to look at both together and, I  
6 think, the 24 hours is some benchmark of magnitude on how much  
7 you miss that repair -- not necessarily the repair appointment,  
8 but do the actual repair. There may be some overlap, but I  
9 wouldn't say they're totally the same.

10 Q But again, this would be an area where the Commission  
11 might want to look at these two and decide whether it might be  
12 appropriate to have an adjustment due to the correlation between  
13 the two, correct?

14 A I would look at this as one might be more a judgment of  
15 magnitude of missing the appointment, the 24-hour one, so it  
16 might be looked at a different way in the plan, should the remedy  
17 be higher for the length of time you miss the appointment.

18 Q Okay. I'm not clear on what you're proposing. When  
19 you say it should be looked at a different way, what do you mean,  
20 specifically?

21 A I mean, there are some metrics that go together and  
22 that one will tell you did you miss the appointment and the other  
23 would tell you by how much. So, I could conceivably see that  
24 that would be a little different than the situation I talked  
25 about before where you'd pay -- if you missed one or you missed

1 the other, you'd pay the same remedy. It might be one if you  
2 missed them both together and you missed the magnitude one as  
3 well, it might be a higher remedy.

4 Q So, if I understand what you're saying, basically,  
5 you're saying in this case these two measures, it's possible that  
6 one could be failed without the other one, but in some instances,  
7 certainly failure of one and failure of the other would occur?

8 A Yes, in some instances, yes.

9 MR. CARVER: Thank you. I'm at a stopping place.

10 CHAIRMAN JACOBS: Very well. We'll take a break for  
11 lunch. We'll come back at 1:30. Thank you.

12 (Lunch recess.)

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14 (Transcript continues in sequence in Volume 2.)

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1 STATE OF FLORIDA )

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CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, KORETTA E. STANFORD, RPR, Official Commission  
 6 Reporter, do hereby certify that the Hearing in Docket No.  
 000121-TP was heard by the Florida Public Service Commission at  
 the time and place herein stated.

7

8 IT IS FURTHER CERTIFIED that I stenographically  
 reported the said proceedings; that the same has been transcribed  
 under my direct supervision; and that this transcript, consisting  
 9 of 190 pages, Volume 1 constitutes a true transcription of my  
 notes of said proceedings and the insertion of the prescribed  
 10 prefiled testimony of the witnesses.

11 I FURTHER CERTIFY that I am not a relative, employee,  
 attorney or counsel of any of the parties, nor am I a relative or  
 12 employee of any of the parties' attorneys or counsel connected  
 with the action, nor am I financially interested in the action.

13

DATED THIS 30th DAY OF APRIL, 2001.

14

15

*Koretta E. Stanford*

16

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