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 6
PAGES 941 THROUGH 1124

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: Friday, April 27, 2001

TIME: Commenced at 9:30 a.m.

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

REPORTED BY: JANE FAUROT,
Official FPSC Reporter

APPEARANCES: (As heretofore noted.)

1

I N D E X

2

WITNESSES

3

NAME: **PAGE NO.**

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CHERYL BURSH

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ROBERT MICHAEL BELL

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1   **EXHIBITS**

2   **NUMBER:**   **ID.   ADMTD.**

3   25   CLB-1 through CLB-3   946   1058

4   26   (Late-Filed) ALEC Penalty Plan for
                 Covad Examples   1045

5   27   RMB-1 and RMB-2   1123   1123

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1   PROCEEDINGS

2   (Transcript follows in sequence from

3 Volume 5.)

4   CHAIRMAN JACOBS: Good morning. We'll go ahead and get

5 started. The first witness is up. Good morning.

6   Mr. Prescott.

7   - - - - -

8   CHERYL BURSH

9 was called as a witness on behalf of AT&T Communications of the

10 Southern States, Inc., and, having been duly sworn, testified as

11 follows:

12   DIRECT EXAMINATION

13 BY MR. PRESCOTT:

14   Q   Good morning.

15   A   Good morning.

16   Q   Would you please state your name and address, please.

17   A   My name is Cheryl Bursh, and my address is 1200

18 Peachtree Street, Atlanta, Georgia 30309.

19   Q   And how are you employed? Where are you employed?

20   A   I am employed with AT&T Communications of the Southern

21 States, Incorporated.

22   Q   And in what capacity are you employed?

23   A   District Manager in Law and Government Affairs.

24   Q   Ms. Bursh, did you cause to be prepared and filed 41

25 pages of direct testimony and 24 pages of rebuttal testimony in

1   this proceeding?

2   A   Yes.

3   Q   Do you have any changes or corrections to make to your

4   prefiled direct testimony?

5   A   Yes, I do. The changes, proposed changes have --

6   Q   Would you explain the changes?

7   A   -- been passed out. The changes pertain to Exhibit

8   CLB-11, Section G, or Attachment G. On Page 46, if you look down

9   the table, the dollar amount that corresponds to 1.0 is 0. Also

10   on Page 48, the dollar amount that corresponds with 95.0 percent

11   is 0. And if you turn to Page 52, 92.5 percent corresponds to 0

12   dollars. And each of those changes have been highlighted.

13   Q   With those changes and corrections, if asked the same

14   questions today would your answers be the same?

15   A   Yes, they would.

16   MR. PRESCOTT: Commissioner, I would ask that the

17   testimony be entered into the record as if read.

18   CHAIRMAN JACOBS: Without objection show the direct and

19   rebuttal testimony of Ms. Bursh is entered into the record as

20   though read.

21   BY MR. PRESCOTT:

22   Q   Ms. Bursh, were there attached to your direct testimony

23   three exhibits labeled 3LB-1 through 3LB-3?

24   A   Yes.

25   Q   And did you have any exhibits attached to your rebuttal

1 testimony?

2   A   No, I did not.

3   Q   Have you prepared a summary of your testimony?

4   A   Yes, I have.

5   Q   Would you please --

6   CHAIRMAN JACOBS: Do you want to go ahead and mark

7 those exhibits? We will mark those as Composite Exhibit 25.

8   MR. PRESCOTT: Okay.

9   (Composite Exhibit 25 marked for identification.)

10   CHAIRMAN JACOBS: You may proceed.

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

2   **A.**   My name is Cheryl Bursh. My business address is 1200 Peachtree

3   Street, Atlanta, Georgia.

4

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

6   **BACKGROUND.**

7   **A.**   I am employed by AT&T as a Senior Policy Witness. My area of

8   expertise is the development of an effective methodology for

9   measuring BellSouth's performance in providing services to ALECs.

10   My responsibilities include developing Performance Measurements

11   testimony and affidavits for regulatory proceedings, as well as

12   representing AT&T in performance measurements workshops and

13   hearings, including those held in Georgia, Louisiana, Florida, and

14   North Carolina. I have held a variety of management positions at

15   AT&T over the last 19 ½ years, including the sale of large business

16   systems and telecommunications services, systems development for

17   operation support systems, and product marketing and technical

18   support for computer systems. I have a Bachelor of Science Degree

19   from Johnson C. Smith University and a Master of Science Degree

20   from George Washington University.

21

22

23

1 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

2 **A.** My testimony focuses on the ALEC Coalition's Joint Performance

3 Incentive Plan that is designed to ensure that ALECs receive the level

4 of service from BellSouth that will enable them to successfully

5 compete in the provision of local telephone service in Florida. I

6 describe why the remedy plan proposed by the ALECs is the

7 appropriate plan for this Commission to adopt in order to ensure that

8 (1) BellSouth is providing service to ALECs that is in parity with that it

9 provides to its own retail operations and affiliates, (2) the telephone

10 industry in Florida is open to competition in the provision of local

11 service, and (3) Florida's telephone industry remains open to

12 competition in the event BellSouth obtains 271 approval. Specifically,

13 my testimony covers Issues 2.A, 2.B, 3.A, 3.B, 4.A, 4.B., 4.C, 5.A,

14 5.B, 6.A, 6.B, 7, 8, 9, 10, 11.A, 11.C.3 – 5, 12.A, 12.C.3 – 5, 13, 14.A,

15 14.B, 15, 16, 17, 18, 19.A, 19.B, 20, 21, 22 & 23 .

16

17 **Q. WHAT DO YOU MEAN BY SELF-EXECUTING PERFORMANCE**

18 **REMEDIES?**

19 **A.** Self-executing remedies are monetary and non-monetary

20 consequences that are automatically triggered against BellSouth

21 upon an objective demonstration that BellSouth has failed to provide

22 service at the level required by a specific performance standard.

23

2

1   ISSUE 8:   WHEN SHOULD THE PERFORMANCE

2   ASSESSMENT PLAN BECOME EFFECTIVE?

3

4   Q.   WHY IS THERE A NEED FOR A REMEDIES PLAN?

5   A.   The ALECs believe that the only way for BellSouth to establish that its

6   local market is irreversibly open to competition as required by the

7   Telecommunications Act of 1996 (the "Act"),[1] is by demonstrating that

8   it provides ALECs with non-discriminatory access to its services and

9   facilities. BellSouth's level of performance is determined through the

10   use of a set of comprehensive measures. A remedies plan is needed

11   to incent BellSouth and any other Incumbent Local Exchange Carrier

12   ("ILEC") to provide nondiscriminatory service to ALECs, to enforce the

13   market opening provisions of Section 251 of the Act,[2] and also to

14   prevent any deterioration in BellSouth's provision of service to ALECs

15   subsequent to Section 271 approval.[3]

16

17   Q.   IS A PERFORMANCE INCENTIVE PLAN NECESSARY FOR

18   OPENING LOCAL MARKET?

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[1] 47 U.S.C Section 251 c (2) c and (d).

[2] In order to enforce the market opening provisions of Section 251 Texas, Pennsylvania, and Massachusetts have implemented self-executing remedy plans that became effective prior to an ILEC obtaining 271 approval.

[3] See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region InterLATA Service in the State of New York, Memorandum Opinion And Order, (BA-NY Order) Federal Communications Commission, CC Docket No. 99-295, para. 429.

1   **A.**   Yes. Self-enforcing consequences are equally useful in assuring the

2   251 requirements relating to non-discrimination are met, regardless of

3   whether a section 271 application has been made or approved. With

4   respect to performance measures, it is reasonable to presume that the

5   performance measurements that provide the basis for self-enforcing

6   consequences be consistent with those employed for evaluating a

7   Section 271 application.

8

9   **Q.**   **WHY ARE REMEDIES IMPORTANT TO ENSURING LOCAL**

10   **COMPETITION?**

11   **A.**   Remedies are important to ensuring local competition because

12   BellSouth is in the unique position of being the main supplier of

13   services to ALECs and also their main competitor. As the testimony of

14   the ALECs demonstrates, BellSouth has the capability to seriously

15   affect an ALEC's ability to enter the local market and successfully

16   serve its customers. BellSouth has much to gain by providing poor

17   service to ALECs. Therefore, a remedy structure must be established

18   which makes it more economical for BellSouth to cooperate and

19   provide quality service, than to discriminate against competing

20   providers to the detriment of local competition.

21   Developing appropriate performance standards is only the first step to

22   ensuring that ALECs receive parity service from BellSouth as required

23   by the Act. If there is no incentive for BellSouth to abide by the

1   performance standards, then those standards are useless. The

2   remedies provide the incentive for BellSouth to comply. Therefore,

3   remedies must be significant enough to ensure that it is more

4   beneficial for BellSouth to comply with the performance standards

5   than to pay the remedies for non-compliance. If remedies are not

6   sufficient to incent BellSouth to provide ALECs parity service,

7   sufficient competition will not develop and BellSouth will continue to

8   hold a monopoly in the local telephone market in Florida.

9

10 Q. **WHAT PRINCIPLES DO THE ALEC COALITION CONTEND ARE**

11   **THE FOUNDATION OF AN EFFECTIVE REMEDIES PLAN?**

12 A. There are several principles that the ALEC Coalition contend provide

13   the foundation of an effective remedies plan. They are:

14   1.   Remedies must be set at a level high enough to incent

15   BellSouth to meet its obligations under the Act to provide

16   nondiscriminatory access to services and facilities. The ALECs' plan

17   provides for remedies for poor performance that increase with the

18   level of ALEC activity. The ALECs' plan is "scalable" according to the

19   size of the market in the state. Under the ALECs' plan, the more harm

20   that is done to competition, the greater the remedy payment.

21   2.   Enforcement mechanisms must not produce remedies so large

22   that an ALEC is more desirous of receiving discriminatory

1   performance and collecting large remedies than receiving non-

2   discriminatory performance.

3   3.   The structure of a remedies plan should be based on a verified

4   (audited) system with verifiable data and processes. There should be

5   a thorough audit of the performance measurements system by a

6   recognized neutral party who utilizes a disclosed and industry-

7   reviewed methodology before it is officially implemented for the

8   industry. For example, there should be a validation of BellSouth's

9   processes and systems used for data collection, reporting, storage,

10   and retrieval. An effective plan should provide reasonable assurances

11   that the reported data is accurate. See BA-NY Order, at ¶.433.

12   4.   Remedies must be self-executing – no delay, no expense to the

13   harmed ALEC; no litigation required to invoke remedies. ALECs

14   should not be required to undergo costly and time-consuming litigation

15   when the performance measurement systems shows discrimination.

16   The FCC has stated that an effective enforcement plan shall "have a

17   self-executing mechanism that does not leave the door open

18   unreasonably to litigation and appeal." See BA-NY Order, at ¶433.

19   5.   Remedies must escalate according to the duration and

20   magnitude of poor performance.

21   6.   The remedies plan should be structured so that it is simple to

22   implement and administer. This is especially important in light of the

23   complexity of BellSouth's proposal.

1   7.   Interest must accumulate on monetary payments that are not

2   paid in accordance with the remedies plan.

3

4   Q.   **DO THE ALECS HAVE A JOINT PROPOSAL FOR REMEDIES IN**

5   **FLORIDA THAT MAKE IT MORE ECONOMICAL FOR BELLSOUTH**

6   **TO PROVIDE COMPLIANT SUPPORT THAN TO DISCRIMINATE**

7   **AGAINST COMPETING PROVIDERS?**

8   A.   Yes. That proposal, the Performance Incentive Plan, Version 2.0, is

9   attached to this testimony as Exhibit CLB-1. By adopting the

10   Performance Incentive Plan, this Commission can be assured that

11   there is a sound remedy plan in place to protect the end user - the

12   Florida consumer. This remedy plan will also assist in the rapid and

13   sustainable development of a competitive local telecommunications

14   market in Florida.

15

16   Q.   **DOES THE FLORIDA PUBLIC SERVICE COMMISSION STAFF**

17   **HAVE ANY REMEDY PLAN PREFERENCE?**

18   A.   No. Paul Stallcup stated that it was not his intent in preparing the

19   Strawman Proposal to express any preference for a particular remedy

20   plan. He conveyed that he was merely attempting to provide a

21   conceptual framework for the parties to identify issues and make their

22   case about how different components of the plan should be

23   specified.(Stallcup Deposition, pp. 8-10)

1   **ISSUE 2A: WHAT ARE THE APPROPRIATE ENFORCEMENT**

2   **MEASURES TO BE REPORTED BY BELLSOUTH FOR TIER I AND**

3   **TIER II?**

4

5   **ISSUE 2B: WHAT ARE THE APPROPRIATE LEVELS OF**

6   **DISSAGREGATION FOR COMPLIANCE REPORTING?**

7

8   **ISSUE 9:   WHAT ARE THE APPROPRIATE ENFORCEMENT**

9   **MEASUREMENT BENCHMARKS AND ANALOGS?**

10

11   **ISSUE 11.A: WHAT IS THE APPROPRIATE METHODOLOGY**

12   **THAT SHOULD BE EMPLOYED TO DETERMINE IF BELLSOUTH**

13   **IS PROVIDING COMPLIANT PERFORMANCE TO AN INDIVIDUAL**

14   **ALEC? (TIER I)**

15

16 **Q.** **DESCRIBE THE STRUCTURE OF THE ALECS' PROPOSED**

17   **REMEDIES PLAN.**

18 **A.** Generally, the ALEC Plan is structured to evaluate, (1) the quality of

19   service BellSouth delivers to each individual ALEC as compared to its

20   own retail operations, and (2) the quality of service BellSouth delivers

21   to the ALEC industry as a whole when compared to its own retail

22   operations.

1   In the ALEC Plan, BellSouth's service to ALECs and to its own retail

2   operations is gauged using a comprehensive set of performance

3   measurements, referred to in the Plan as "sub-measures." These

4   sub-measures cover the full panoply of BellSouth's activities that

5   ALECs must rely upon in order to deliver their retail service offerings

6   in the local market place. Every sub-measure is designed to identify

7   and measure a key area of activity that affects ALEC and BellSouth

8   customers, and consequently, the development of competition in

9   Florida's local telecommunications market. In order for the

10   Commission and ALECs to monitor BellSouth's performance for a

11   particular sub-measure, and impose remedies in a case where

12   BellSouth performance is discriminatory, any remedy plan must first

13   set performance standards that will be used to determine whether

14   BellSouth's performance is compliant.

15   The performance standard for each sub-measures included in the

16   ALEC remedy plan are divided into two categories, retail analogs and

17   benchmarks. Retail analogs are for those measures for which the

18   performance standard requires BellSouth to provide service to ALECs

19   that is in parity with service it provides to its own retail operations. In

20   order to make a parity determination, a retail analog is established for

21   each submeasure being compared. A direct comparison is then made

22   between BellSouth's performance data for its retail operations and an

1   ALEC's performance data. A statistical methodology is then used to

2   determine if any observed differences in the data are significant.

3   The ALEC Plan advocates the use of the modified Z-statistic to

4   determine whether BellSouth's performance is parity with the analog

5   set for a particular sub-measure. Dr. Bell's direct testimony will

6   addresses the details of the statistical methodology in the ALEC Plan.

7   There is no statistical test needed or applied to measures using a

8   benchmark as the performance standard. Measures for which the

9   performance standard is a benchmark require BellSouth to meet an

10   absolute level of required performance. For example, if a benchmark

11   for a particular order requires BellSouth to complete ninety-five

12   percent of the orders within 3 days, but BellSouth completed only

13   seventy percent of the orders for a given month in 3 days only,

14   BellSouth's performance would not be compliant.

15   The measures proposed in the ALEC remedy plan are set forth in of

16   the direct testimony of Karen Kinard (including disaggregation,

17   benchmarks and retail analogs). In the ALEC Plan, because the sub-

18   measures monitor key areas of ALEC and BellSouth activity, all sub-

19   measures proposed by the ALECs are included in the determination of

20   remedy payments.

21   Remedy consequences for discriminatory performance by BellSouth

22   or any other ILEC operate on two tiers. Tier I addresses the

23   consequences for non-compliant performance delivered to an

1		individual ALEC. Tier I remedies are paid to the individual ALECs for
2		the harm suffered by the ALEC and its customers. Under Tier I of the
3		ALEC Plan, however, remedies are only generated for an individual
4		ALEC if that ALEC's business activity touches upon a particular sub-
5		measure. For example, an ALEC who does not sell port and loop
6		combinations (UNE P) would not have compliance determinations
7		made for the submeasure Missed Installation Appointment – UNE P.
8		Tier II addresses the consequences for non-compliant performance
9		delivered to the ALEC industry as a whole. Tier II remedies are paid
10		to the state for harm done to the competitive market and consumers
11		as a whole.
12		
13	Q.	SHOULD REMEDIES APPLY TO PERFORMANCE MEASURES
14		THAT ARE SHOWN TO BE DUPLICATIVE OF OR "HIGHLY
15		CORRELATED" WITH OTHER MEASURES?
16	A.	No. However, data and methods are lacking to omit any measures at
17		this time. The decision whether or not to apply a remedy depends on
18		the strength of the correlation between measures. Because two
19		measures appear to be similar does not mean they are duplicative or
20		correlated enough to warrant exclusion of either. An analysis of the
21		performance data is required to make a determination. The data-
22		dictated degree of correlation will determine whether remedies are
23		appropriate. Without data, there cannot be any correlation

1   determination. If a thorough and appropriate data investigation

2   discloses that two measures are highly correlated, then they are in

3   effect measuring the same thing. In this case, applying penalties to

4   each of them could double the consequences and remedies are not

5   appropriate for both measures. If the correlation is determined to be

6   small to moderate, the metrics are not measuring the same thing and

7   remedies should apply. An industry-developed correlation analysis

8   should be developed to make valid correlation determinations.

9

10   Q.   HAS AN INDUSTRY-DEVELOPED CORRELATION TEST BEEN

11   APPLIED TO MEASURES RECOMMENDED IN THE STAFF

12   TESTIMONY OR MEASURES SPECIFIED IN BELLSOUTH'S SQM?

13   A.   No. The industry (ALECs, BellSouth & FL PSC) has not agreed upon

14   or implemented correlation tests to assess the possibility of correlation

15   of BellSouth measures in Florida. Currently, there is no agreed upon

16   basis for exempting measures from remedies due to correlation.

17   Therefore, any comments relating to measure overlap are non-

18   substantiated and it is premature to exclude any measures from the

19   remedy plan based on claims that the excluded measure is correlated.

20   An industry-developed correlation analysis needs to be developed and

21   implemented.

22

1 Q. **SHOULD REMEDIES APPLY TO MEASURES THAT REFLECT**

2 **MANUAL AND PARTIALLY MECHANIZED PROCESSING**

3 A. Yes. Discriminatory performance can occur no matter what the level

4 of mechanization. Manual orders can represent key aspects of a

5 ALEC's business. Moreover, in some cases, for example, some xDSL

6 services, and other UNEs, or branded OS/DA, etc. ALECs have no

7 choice but to use non-mechanized ordering. BellSouth should not be

8 able to discriminate against an ALEC who uses non-mechanized

9 ordering. Accordingly, remedies should be applied to sub-measures

10 that report on manual and partially mechanized order processing.

11

12 Q. **WHAT IS DISAGGREGATION?**

13 A. Disaggregation is the process of breaking down performance data into

14 sufficiently specific categories or dimensions so that like-to-like

15 comparisons can be made. For example, BellSouth retail offerings

16 contain a number of varying products. In order to compare

17 BellSouth's performance for its own retail customers to its

18 performance for ALECs, it is necessary for UNE analog loops product

19 to be compared separately with BellSouth retail POTS product.

20 Therefore, appropriate disaggregation which compares like-to-like is

21 an essential component to a remedy plan.

22

23

1   **Q.**   **WHY IS DISSAGREGATION CRITICAL TO AN EFFECTIVE**

2   **REMEDY PLAN?**

3   **A.**   Disaggregation is critical to an effective remedy plan because it

4   prevents poor performance in one area (such as xDSL) from being

5   obscured by being lumped together with dissimilar performance data.

6   For example, comparing central office provisioning work to field

7   dispatch provisioning work masks discriminatory performance.

8   Sufficient disaggregation is absolutely essential for accurate

9   comparison of results to expected performance. This is true

10   regardless of whether a retail analog or a benchmark serves as the

11   performance standard.

12

13   **Q.**   **IS THE DISAGGREGATION PROPOSED BY ALECS FOR**

14   **PERFORMANCE REPORTING THE SAME LEVEL OF**

15   **DISAGGREGATION REQUIRED FOR COMPLIANCE**

16   **DETERMINATIONS?**

17   **A.**   Yes. The reporting would provide the documentation necessary to

18   provide understanding and supporting documentation for the

19   compliance determination.

20

21   **Q.**   **WHAT DISAGGREGATION IS PROPOSED BY THE ALECS?**

22   **A.**   Disaggregation should be required by interface type, pre-order query

23   type, product, volume category, work activity type, trouble type, trunk

1   design and type (for trunk blockage measurements), maintenance and

2   repair query type and collocation category. The required

3   disaggregation for each specific measure is included in the direct

4   testimony of Karen Kinard.

5

6   **ISSUE 11.C: WHAT IS THE APPROPRIATE STRUCTURE:**

7   **3. What is the appropriate remedy calculation?**

8   **4. What is the appropriate benchmark table for small**

9   **sample sizes?**

10   **5. Should there be a floor on the balancing critical**

11   **value?**

12

13   Q.   **WHAT REMEDY CALCULATION IS PROPOSED IN THE ALECS'**

14   **PERFORMANCE INCENTIVE PLAN FOR TIER I MEASURES?**

15   A.   The ALECs' plan contains two calculation methods. The first remedy

16   calculation methodology is applied to parity submeasures. The

17   second remedy calculation methodology is applied for benchmark

18   submeasures.

19

20   Q.   **WHAT IS THE REMEDY CALCULATION USED FOR PARITY**

21   **MEASURES?**

22   A.   For parity submeasures, Tier 1 payments are paid to individual ALECs

23   if the difference in a given month between BellSouth's performance for

1   itself or affiliates and that which it provides to a particular ALEC

2   exceeds the gap specified in the ALECs' remedy plan. Tier I has

3   three categories of violations, depending upon how big the gap in

4   performance between what BellSouth provides for itself or its affiliates

5   and the performance it provides to ALECs. Once a submeasure

6   failure is determined, the calculated remedy should be a continuous

7   function of severity of the failure. Severity is represented by the

8   magnitude of the gap between the modified z and the balancing

9   critical value. As specified in Table I, the consequences are a

10   function of severity of the failure.

11   TABLE I[4]

Range of modified z-statistic value (z)	Performance Designation	Applicable Consequence ($)
greater than or equal z^*	Compliant	0
less than z^* to $5z^*/3$	Basic Failure	$a(z/z^*)^2 + b(z/z^*) + c$
less than $5z^*/3$ to $3z^*$	Intermediate Failure	
less than $3z^*$	Severe Failure	25,000

12

13 Q.   WHAT IS THE REMEDY CALCULATION USED FOR BENCHMARK

14   DETERMINATIONS?

---

[4] z represents the modified z-statistic value and z^* represents the balancing critical value.
The coefficients of the consequence function are a=5625, b=-11250, & c=8125.

1   **A.**   When the benchmark serves as the performance standard, the

2   measurement establishes a performance failure directly and

3   assesses the degree to which performance departs from the

4   standard. For benchmark measures, the performance is expressed

5   as "B% meet or exceed the benchmark" where B% is a proportion

6   figure set less than 100%. Accordingly, a performance failure

7   should be declared if the calculated performance is not equal to or

8   greater than the "B%" level. As performance becomes

9   increasingly worse as compared to the benchmark, additional

10   consequences will be incurred as reflected in Table 2. The

11   consequences depend on the magnitude of non-compliance.

12   TABLE 2[5]

Range of Benchmark Result (x)	Performance Designation	Applicable Consequence ($)
Meets or exceeds B%	Compliant	0
Meets or exceeds (1.5B-50)% but worse than B%	Basic Failure	$d[x/(100-B)]^2 + eB[x/(100-B)^2] + f[B/(100-B)]^2 + g$
Meets or exceeds (2B-100)% but worse than (1.5B-50)%	Intermediate Failure	
Worse than (2B-100)%	Severe Failure	25,000

13

1 **Q.** **HOW ARE TIER I PAYMENTS CALCULATED FOR BENCHMARK**

2 **MEASURES WHEN MEASUREMENT SETS ARE SMALL?**

3 **A.** Benchmark measures are "pass/fail". However, the ALECS recognize

4 that in some instances the number of transactions (e.g., in a particular

5 geographic area) may be small. In those situations, BellSouth could

6 have a harder task to meet the benchmark.

7 Consider this example:

8 The benchmark for a particular submeasure requires BellSouth to

9 perform a function in 2 hours, 95% of the time. Due to disaggregation,

10 there could be a situation where there are only 4 transactions for

11 which to determine BellSouth's performance. With only 4

12 transactions, BellSouth fails this benchmark if it misses the measure

13 only one time. The ALECs' remedy plan allows for adjustments to be

14 made when the size of the data set is very small, such as in the

15 example above.[6] The Benchmark Adjustment Table is specified in

16 Exhibit CLB-2.

17

18 **Q.** **ARE ADDITIONAL TIER I REMEDIES INCURRED BASED ON THE**

19 **DURATION OF A FAILURE? IF SO, HOW IS THE ADDITIONAL**

20 **AMOUNT DETERMINED?**

---

[5] In Table 2, the quantity x is the actually measured proportion and the coefficients are d=25000, e=-45000, f=22,500, and g=2500.

[6] The Benchmark Adjustment Table that is used to adjust for small data sets is attached as Exhibit CLB-2.

1 A. Yes, The ALECs' plan calls for a $25,000 payment to the ALEC for

2   "chronic" or recurring performance failures. The $25,000 payment is

3   levied beginning with the third month that a particular submeasure is

4   missed. The $25,000 monthly payment continues for every month

5   until the performance for that submeasure returns to the "compliant".

6   One month of compliant performance resets the clock. Chronic

7   failures are remedied at the same rate as severe violations.

8

9 Q. IS THERE A NEED FOR A FLOOR ON THE BALANCING CRITICAL

10   VALUE AS APPLIED IN THE ALEC REMEDY CALCULATION? IF

11   SO, WHY?

12 A. No. You do not need the floor on the Balancing Critical Value in the

13   ALEC remedy plan because the balancing is based on a materiality

14   that is reasonable.

15

16   ISSUE 23: SHOULD THE PERFORMANCE ASSESSMENT PLAN

17   INCLUDE A COMPETITIVE ENTRY VOLUME ADJUSTMENT, AND

18   IF SO HOW SHOULD SUCH AN ADJUSTMENT BE

19   STRUCTURED?

20

21 Q. DOES A TRANSACTION-BASED PLAN REQUIRE SPECIAL

22   ADJUSTMENTS BECAUSE OF SMALL TRANSACTION

23   VOLUMES?

1 A.   Yes. For a transaction-based plan, payments on a per transaction

2   basis will be too small to incent BellSouth to behave in a

3   nondiscriminatory manner. As a result, nascent services or embryonic

4   ALECs would be most negatively affected by a transaction-based

5   plan. In an attempt to address this inadequacy, some type of

6   adjustment is necessary.

7

8 Q.   IS THE COMPETITIVE ENTRY VOLUME ADJUSTMENT A

9   FEATURE IN A TRANSACTION-BASED REMEDY PLAN?

10 A.   Yes. This feature attempts to compensate for the inadequate

11   remedies generated by the transaction-based plan.

12

13 Q.   IS THE COMPETITIVE ENTRY VOLUME ADJUSTMENT A

14   REQUIRED FEATURE IN A MEASURE-BASED PLAN SUCH AS

15   THE ALECS' PERFORMANCE INCENTIVE PLAN?

16 A.   No. By design, a measure-based plan will generate sufficient

17   remedies to motivate compliant behavior by BellSouth even though

18   the transaction volumes for embryonic ALECs and nascent services

19   are very low. Regardless of transaction volumes, the Performance

20   Incentive Plan is effective without the complexity of a competitive entry

21   volume adjustment

22

1   **ISSUE 12.A: WHAT IS THE APPROPRIATE METHODOLOGY**

2   **THAT SHOULD BE EMPLOYED TO DETERMINE IF BELLSOUTH**

3   **IS PROVIDING COMPLIANT PERFORMANCE ON A STATEWIDE**

4   **ALEC-AGGREGATE BASIS?(TIER II)**

5

6   **ISSUE12.C: WHAT IS THE APPROPRIATE STRUCTURE:**

7   **3. What is the appropriate remedy calculation?**

8   **4. What is the appropriate benchmark table for small**

9   **sample sizes?**

10   **5. Should there be a floor on the balancing critical**

11   **value?**

12

13   **ISSUE 22: SHOULD THE PERFOMANCE ASSESSMENT PLAN**

14   **INCLUDE A MARKET PENETRATION ADJUSTMENT, AND IF SO**

15   **HOW SHOULD SUCH AN ADJUSTMENT BE STRUCTURED?**

16

17 **Q.**   **ARE THE RULES FOR MAKING TIER II PERFORMANCE**

18   **DETERMINATIONS SIMILAR TO THOSE THAT APPLY FOR**

19   **TIER I?**

20 **A.**   Yes. The same business rules apply under Tier II to aggregate data

21   of the individual ALECs as are employed for the individual ALEC data

22   under Tier I, except that a different consequence threshold is used.

1   Therefore, a modified consequence table, which is specified as Table

2   3, is applied for Tier II calculations.

3

4   **Q.**   **WHAT IS THE TIER II REMEDY CALCULATION FOR PARITY**

5   **SUBMEASURES?**

6   **A.**   For parity submeasures, Tier II payments are paid to a public fund

7   identified by the Commission if the difference in a given month

8   between BellSouth's performance for itself or affiliates and that which

9   it provides to the aggregate of ALECs exceeds the gap specified in the

10   ALECs' remedy plan. Once a submeasure failure is determined, the

11   calculated remedy should be a continuous function of severity of the

12   failure. Severity is represented by the magnitude of the gap between

13   the modified z and the balancing critical value calculated based on the

14   aggregate data of the individual ALECs. The form of consequences as

15   a function of severity is most simply accomplished by the use of a

16   quadratic function specified below:

1   TABLE 3[7]

2

Range of modified z-statistic value (z)	Performance Designation	Applicable Consequence ($)
greater than or equal 5z*/3	Indeterminate	0
less than 5z*/3 to 3z*	Market Impacting	$n [a(z/z^*)^2 + b(z/z^*) + c]$
less than 3z*	Market Constraining	n25,000

3

4   Q.   WHAT IS THE REMEDY CALCULATION USED FOR BENCHMARK

5   MEASURES?

6   A.   When the benchmark serves as the performance standard, the

7   measurement establishes a performance failure directly and

8   assesses the degree to which performance departs from the

9   standard. For benchmark measures, the performance is expressed

10   as "B% meet or exceed the benchmark" where B% is a proportion

11   figure set less than 100%. Accordingly, a performance failure

12   should be declared if the calculated performance for the entire

13   industry is not equal to or greater than the "B%" level. As with

14   measurements that are judged against a parity standard, those

15   compared to a benchmark standard should be subject to additional

---

[7] z represents the modified z-statistic value and z* represents the balancing critical value. The coefficients of the consequence function are a=5625, b=-11250, & c=8125. The quantity n is the market penetration factor.

1   consequences as the performance becomes increasingly worse

2   compared to the benchmark as specified below:

3   The following describes when a Tier 2 payment is triggered with

4   benchmark submeasures:

Range of Benchmark Result (x)	Failure Designation	Applicable Consequence ($)
Meets or exceeds $(1.5B-50)\%$	Indeterminate	0
Meets or exceeds $(2B-100)\%$ but worse than $(1.5B-50)\%$	Market Impacting	$n \{d[x/(100-B)]^2 + eB[x/(100-B)^2] + f[B/(100-B)]^2 + g\}$
Worse than $(2B-100)\%$	Market Constraining	$n25,000$

5

6   All violations count. Tier 2 payments are paid directly into a state

7   designated fund. BellSouth should have no direct or indirect interest

8   in this fund. An example of this fund is the State Treasury.

9

10   **Q.**   **IS THE TIER II REMEDY AMOUNT BASED ON ALEC MARKET**

11   **PENETRATION LEVELS?**

12   **A.**   Yes. "n" corresponds to the number of ALEC-served lines in the state

13   of Florida.

14

1 **Q.** **WHAT IS THE "n" FACTOR USED IN THE TIER II REMEDY**

2 **CALCULATION FOR BENCHMARK AND PARITY MEASURES?**

3 **A.** The Tier II remedy calculation includes a factor "n" in the calculation.

4 This multiplier depends upon the openness of the local market to

5 competition. In other words, "n" is based on ALEC market penetration

6 levels. The value of "n" decreases as the number of ALEC served

7 lines increases. This results in Tier 2 payments decreasing as the

8 ALEC market penetration increases. The following table illustrates

9 how the market penetration adjustment is determined:

10

11 Tier II – Determinining "n"

Lines provided to CLECs	Value of "n"
more than or equal to 40% less than 50%	1
more than or equal to 30% less than 40%	2
more than or equal to 20% less than 30%	4
more than or equal to 10% less than 20%	6
more than or equal to 5% less than 10%	8
0% to less than 5%	10

12

13

14

1   **Q.**   **HOW ARE TIER II PAYMENTS CALCULATED FOR BENCHMARK**

2   **MEASURES WHEN MEASUREMENT SETS ARE SMALL?**

3   **A.**   The application of the Benchmark Adjustment Table for Tier I remedy

4   calculations is also appropriate for Tier II remedy calculations.

5

6   **Q.**   **IS THERE A NEED FOR A FLOOR ON THE BALANCING CRITICAL**

7   **VALUE AS APPLIED IN THE ALEC REMEDY CALCULATION? IF**

8   **SO, WHY?**

9   **A.**   No.   You do not need the floor on the Balancing Critical Value in the

10   ALEC remedy plan because the balancing is based on a materiality

11   that is reasonable.

12

13   **ISSUE 18:   WHAT LIMITATION OF LIABILITY, IF ANY, SHOULD**

14   **BE APPLICABLE TO BELLSOUTH?**

15

16   **ISSUE 19A: WHAT TYPE OF CAP, IF ANY, IS APPROPRIATE**

17   **FOR INCLUSION IN THER PERFORMANCE ASSESSMENT PLAN?**

18

19   **ISSUE 19B: WHAT IS THE APPROPRIATE DOLLAR VALUE OF A**

20   **CAP IF APPLICABLE?**

21

22   **ISSUE 20:   WHAT PROCESS, IF ANY, SHOULD BE USED TO**

1   DETERMINE WHETHER PENALTIES IN THE EXCESS OF THE

2   CAP SHOULD BE REQUIRED?

3

4   ISSUE 21:   IF THERE IS A CAP, FOR WHAT PERIOD SHOULD

5   THE CAP APPLY?

6

7 Q. WHAT IS AN ABSOLUTE CAP?

8 A. An absolute cap represents a limit on BellSouth's liability for providing

9   non-compliant service to ALECs.

10

11 Q. WHY IS AN ABSOLUTE CAP UNACCEPTABLE?

12 A. An absolute cap provides ILECs with the means to evaluate the cost

13   of market share retention through the delivery of non-compliant

14   performance. Second, absolute caps send the signal that once the

15   ILEC's performance deteriorates to a particular level (i.e. reaching the

16   absolute cap) then further deterioration in performance is irrelevant.

17

18 Q. DOES THE ALECS'S REMEDY PLAN INCLUDE AN ABSOUTE

19   CAP?

20 A. No. ALECs do not support an absolute cap on remedy payments.

21   However, a review threshold (procedural cap)—which allows for a

22   regulatory hearing when a certain level of remedy payments are

23   exceeded—may be appropriate. Procedural caps establish a preset

1   level at which the ILEC could seek regulatory review of the

2   consequences that are due. However, the procedural cap would not

3   automatically absolve an ILEC of liability for a consequence.

4   Procedural caps, therefore, avoid both the problems of absolute caps.

5   They do not provide ILECs with the opportunity to evaluate the "cost"

6   of retaining share through non-compliance. Likewise, they do not

7   absolve an ILEC from consequences for unchecked performance

8   deterioration.

9   If a procedural cap is adopted, it should not stop Tier 1 payments to

10   ALECs because Tier 1 payments are intended to at least partially

11   compensate ALECs for the harm incurred because of the performance

12   failure. Absolute caps also create complexity and ambiguity for how to

13   allocate a portion of the legitimate remedies among the ALECs and

14   the state.

15

16   Q.   WHAT WOULD HAPPEN ONCE THE PROCEDURAL CAP IS

17   REACHED?

18   A.   If the procedural cap is reached, BellSouth should continue to make

19   Tier 2 payments into an interest-bearing registry or escrow account

20   that earns a minimum interest rate as approved by the Commission.

21   BellSouth would have the burden of showing that the amount due for

22   poor performance to the ALECs in aggregate do not merit the

23   remedies invoked. The Commission would then decide whether and

1   to what extent the amount in excess of the procedural cap should be

2   paid out. The procedural cap needs to be set sufficiently high enough

3   so as not to negate the benefits of self-executing remedies.

4

5 Q. SHOULD AN ANNUAL OR MONTHLY PROCEDURAL CAP BE

6   ESTABLISHED?

7 A. The procedural cap should apply on a rolling twelve month basis.

8   The 39% procedural cap in the Strawman Proposal is reasonable.

9

10   ISSUE 3A: WHAT PERFORMANCE DATA AND REPORTS

11   SHOULD BE MADE AVAILABLE BY BELLSOUTH TO ALECS?

12

13   ISSUE 3B: WHERE, WHEN, AND IN WHAT FORMAT SHOULD

14   BELLSOUTH PERFORMANCE DATA AND REPORTS BE MADE

15   AVAILABLE?

16

17 Q. SHOULD PERFORMANCE REPORTS PROVIDE SUFFICIENT

18   INFORMATION FOR MAKING PERFORMANCE

19   DETERMINATIONS?

20 A. Yes. BellSouth's reporting should be sufficient for making

21   performance determinations. The reports should include BellSouth's

22   provision of:

23   a. Services to BellSouth's retail customers in aggregate;

1   b. Services and facilities provided to any BellSouth local

2   exchange affiliate purchasing interconnection,

3   unbundled network elements or resale;

4   c. Services and facilities provided to carriers purchasing

5   interconnection, unbundled network elements or resale

6   in aggregate; and

7   d. Services and facilities provided to individual carriers

8   purchasing interconnection, unbundled network

9   elements or resale.

10 The reports should reflect the outcome of statistical procedures

11 applied to each sub-measure for which a parity determination will be

12 made. Additionally, benchmark results should be reported.

13

14 Q. **IS IT POSSIBLE TO VALIDATE THE ACCURACY AND IMPACT OF**

15   **THE ILECS' REPORTED PERFORMANCE WITHOUT ACCESS TO**

16   **THE RAW DATA THE ILEC USES TO CREATE REPORTS?**

17 A. No. Access to raw data used to create performance reports is

18   essential to report validation.

19

20 Q. **IF ERRORS IN DATA AND PERFORMANCE REPORTS ARE**

21   **IDENTIFIED, SHOULD THEY BE CORRECTED AND THE ALECS**

22   **NOTIFIED?**

1   A.   Yes. If an ILEC or ALEC discovers that raw data records or

2   performance reports exclude data, omit data, are calculated

3   incorrectly, or contain an error of any type, the ILEC should be

4   required to immediately notify affected ALECs. The ILEC should then

5   make arrangements to correct the raw data raw data or performance

6   reports and submit the corrected report to the ALECs. If an ILEC or

7   ALEC discovers a data error after the report is no longer accessible to

8   ALECs, the ILEC should remain responsible for correcting the error

9   and immediately notifying the ALECs of the error and the measures

10   taken to make the correction. The obligation to correct errors after

11   access to the reports has ended should remain for 12 months after the

12   date the report is no longer accessible to ALEC.

13

14 Q.   WHEN AND WHERE SHOULD PERFORMANCE DATA AND

15   REPORTS BE MADE AVAILABLE?

16 A.   Performance data and reports should be made available in a readily

17   accessible manner on an Internet web site. The data and reports

18   should be made available on the 15th day of each month. If any data

19   are excluded, the ILEC must be required to justify all exclusions

20   before they are made.

21

22 Q.   SHOULD ADDITIONAL SUPPORT BE PROVIDED TO ENABLE

23   INTERPRETATION OF THE DATA?

1   **A.**   Yes. The ILEC should maintain a current and accurate user's manual

2   to support ALECs in accessing and interpreting the raw data. The

3   user's manual should include detailed descriptions of what the data

4   means, i.e., beginning and ending parameters for fields, and include

5   definitions for the codes use by the ILEC. The ILEC should also

6   provide a knowledgeable single point of contact with whom ALECs

7   can confer to resolve questions about accessing the raw data

8   including, but not limited to, explanations of the fields, parameters,

9   code definitions, file column purposes and headings.

10

11   **Q.**   **HOW SHOULD PERFORMANCE REPORTS AND DATA BE MADE**

12   **AVAILABLE?**

13   **A.**   The performance reports should be specified in a summarized

14   spreadsheet format and include, at a minimum, those fields of

15   information specified on the attached spreadsheet. See Exhibit CLB-3

16   for an illustrative example of this format. The performance data

17   should be provided in format that can be readily utilized by standard

18   database management tools such as Excel, Access, or Oracle.

19

20   **ISSUE 5a.: SHOULD BELLSOUTH BE PENALIZED WHEN**

21   **BELLSOUTH FAILS TO POST THE PERFORMANCE DATA AND**

22   **REPORTS TO THE WEB SITE BY THE DUE DATE?**

23

1   ISSUE 5b.: IF SO, HOW SHOULD THE PENALTY AMOUNT BE

2   DETERMINED, AND WHEN SHOULD BELLSOUTH BE REQUIRED

3   TO PAY THE PENALTY.

4

5   ISSUE 6.a.: SHOULD BELLSOUTH BE PENALIZED IF THE

6   PERFORMANCE DATA AND REPORTS PUBLISHED ON THE

7   BELLSOUTH WEBSITE ARE INCOMPLETE OR INACCURATE?

8

9   ISSUE 6.b.: IF SO, HOW SHOULD THE PENALTY AMOUNT BE

10   DETERMINED, AND WHEN SHOULD BELLSOUTH BE REQUIRED

11   TO PAY THE PENALTY.

12

13 Q.   ARE THERE OTHER PERFORMANCE FAILURES TO WHICH THE

14   ALECS' REMEDY PLAN APPLIES.

15 A.   Yes. The ALECs' remedy plan calls for payments to be made when

16   BellSouth posts performance data and reports late. If performance

17   data and associated reports are not available to the ALECs by the

18   due day, the ILEC should be liable for payments of $5,000 to a

19   state fund for every day past the due date for delivery of the

20   reports and data. The ILECs' liability should be determined based

21   on the latest report delivered to an ALEC.

22

1 Q. SHOULD REMEDIES BE INCURRED FOR INCOMPLETE OR

2   INACCURATE PERFORMANCE DATA AND REPORTS?

3 A. Yes. If performance data and reports are incomplete, or if

4   previously reported data are inaccurate, then the ILEC should be

5   liable for payments of $1,000 to a state fund for every day past

6   the due date for delivery of the original reports.

7

8   ISSUE 17: WHAT IS THE APPROPRIATE MECHANISM FOR

9   ENSURING THAT ALL PENALTIES UNDER TIER I AND TIER II

10   ENFORCEMENT MECHANISMS HAVE BEEN PAID AND

11   ACCOUNTED FOR?

12

13 Q. SHOULD TIER I AND TIER II REMEDIES PAID BY BELLSOUTH BE

14   VALIDATED?

15 A. Yes. On a random basis, the Commission should have an

16   independent auditing and accounting firm certify that all the

17   penalties under Tier I and Tier II Enforcement Mechanisms are

18   properly and accurately assessed and paid in accordance with

19   Generally Accepted Accounting Principles.

20

21   ISSUE 10: UNDER WHAT CIRCUMSTANCES, IF ANY, SHOULD

22   BELLSOUTH BE REQUIRED TO PERFORM ROOT CAUSE

23   ANALYSIS?

1 Q. SHOULD BELLSOUTH BE REQUIRED TO PERFORM ROOT-CAUSE

2   ANALYSIS?

3 A. Yes. Root cause analysis is a useful procedure for building action

4   plans for unacceptable performance and should be incorporated within

5   a performance measurement system, but it cannot serve as a vehicle

6   for delaying or otherwise avoiding payment of identified performance

7   failures.

8

9 Q. HAS ROOT-CAUSE ANALYSIS BEEN PREVIOUSLY ORDERED IN

10   THE BELLSOUTH REGION?

11 A. Yes. The Georgia Public Service Commission Order stated that

12   BellSouth must perform a "root cause analysis" and file with the

13   Commission a corrective action plan within 30 days of the failure.

14   The root cause analysis would be triggered if any measure fails twice

15   in any 3 consecutive months in a calendar year.

16

17   ISSUE 7:   WHAT REVIEW PROCESS, IF ANY, SHOULD BE

18   INSTITUTED TO CONSIDER REVISIONS TO THE PERFORMANCE

19   ASSESSMENT PLAN THAT IS AOPTED BY THIS COMMISSION?

20

21 Q. SHOULD THE PERFORMANCE ASSESSMENT PLAN APPROVED

22   BY THIS COMMISSION BE REVIEWED EVERY 6 MONTHS?

1   **A.**   Yes. A collaborative work group, including ALECs, the Florida Public

2   Service Commission and BellSouth, should be established to review

3   the Performance Assurance Plan for additions, deletions and

4   modifications. A review cycle should start six months after the date of

5   the Florida Public Service Commission order. BellSouth and the

6   ALECs should file any proposed revisions to the Performance

7   Assessment Plan one month prior to the beginning of each review

8   period. BellSouth may be ordered by the Florida Public Service

9   Commission to modify or amend the Service Quality Measurements or

10   Enforcement Measures. Nothing should preclude either party from

11   participating in any proceeding involving BellSouth's Service Quality

12   Measurements or Enforcement Measures or from advocating that

13   those measurements be modified.

14   In the event a dispute arises regarding the ordered modification or

15   amendments the parties will refer the dispute to the Florida Public

16   Service Commission.

17

18   **ISSUE 8:**   **WHEN SHOULD THE PERFORMANCE ASSESSMENT**

19   **PLAN BECOME EFFECTIVE?**

20

21   **Q.**   **SHOULD A REMEDY PLAN GO INTO EFFECT AS SOON AS IT IS**

22   **ORDERED?**

1   **A.**   Yes. The remedy plan should go into effect as soon as it is ordered

2   by the Commission so that the benefits of its effect on the marketplace

3   can be realized. The plan can be used to measure compliance, so

4   that the state regulators can make the appropriate recommendation to

5   the FCC. Also, the systems can be tested and burned in prior to

6   acceptance, so backsliding can be disincented. It would illustrate to

7   regulatory authorities that BellSouth is committed to irreversibly

8   opening the local market to competition.

9

10   **ISSUE 13: WHEN SHOULD BELLSOUTH BE REQUIRED TO**

11   **MAKE PAYMENTS FOR TIER I AND TIER II NONCOMPLIANCE,**

12   **AND WHAT SHOULD BE THE METHOD OF PAYMENT.**

13

14   **ISSUE 14A: SHOULD BELLSOUTH BE REQUIRED TO PAY**

15   **INTEREST IF BELLSOUTH IS LATE IN PAYING AN ALEC THE**

16   **REQUIRED AMOUNT FOR TIER I?**

17

18   **ISSUE 14B: IF SO, HOW SHOULD THE INTEREST BE**

19   **DETERMINED?**

20

21   **ISSUE 15: SHOULD BELLSOUTH BE FINED FOR LATE**

22   **PAYMENTS OF PENALTIES UNDER TIER II? IF SO, HOW?**

23

1   ISSUE 16:   WHAT IS THE APPROPRIATE PROCESS FOR

2   HANDLING TIER I DISPUTES REGARDING PENALTIES PAID TO

3   AN ALEC?

4

5 Q   SHOULD THE COMMISSION HANDLE DISPUTES REGARDING

6   TIER I PENALTIES PAID TO AN ALEC?

7 A.   Yes. When the ALEC and Bellsouth are unable to reach a mutually

8   agreeable settlement pertaining to the penalties paid, the Commission

9   should settle the dispute.

10

11 Q.   SHOULD BELLSOUTH BE PENALIZED WHEN BELLSOUTH FAILS

12   TO REMIT A CONSEQUENCE PAYMENT BY THE DUE DATE? IF

13   SO, HOW SHOULD THE PENALTY AMOUNT BE DETERMINED,

14   AND WHEN SHOULD BELLSOUTH BE REQUIRED TO PAY THE

15   PENALTY.

16 A.   Yes. If the ILEC fails to remit a consequence payment by the 15th

17   business day following the due date of the data and the reports

18   upon which the consequences are based, then it should be liable

19   for accrued interest for every day that the payment is late. A per

20   diem interest rate that is equivalent to the ILEC's rate of return for

21   its regulated services for the most recent reporting year should

22   apply.

23

1 Q. **ARE THERE REMEDIES THAT THE ALECS SUPPORT IN**

2   **ADDITION TO THE TIER 1 AND TIER 2 PAYMENTS?**

3 A. Yes. The ALECs reserve their right to seek individual legal and

4   regulatory remedies for harm they incur due to BellSouth's

5   performance. This Commission also retains its authority to monitor

6   BellSouth's performance and initiate proceedings to investigate the

7   status of competition within this state. In addition, the FCC retains its

8   ability under the Act to suspend or revoke authority that BellSouth may

9   attain in the future to provide in-region, interLATA long distances

10   services.

11

12 Q. **SHOULD THIS COMMISSION ADOPT THE PERFORMANCE**

13   **INCENTIVE PLAN, VERSION 2.0?**

14 A. Yes, I urge this Commission to order the remedy plan, Performance

15   Incentive Plan (PIP) Version 2.0, proposed by the ALECs. The PIP

16   should be adopted for the following reasons:

17   1. PIP is a comprehensive plan crafted on sound principles;

18   2. The multi-tiered structure serves to incent BellSouth to provide

19   compliant service by escalating consequences for continued

20   violations;

21   3. The Plan includes all measures to properly reflect all parts of

22   customer experiences;

1   4. Consequences under the plan escalate with increased level of

2   severity of violation;

3   5. The Plan provides for two separate evaluations: (1) the quality

4   of support delivered to each individual ALEC, and (2) the

5   quality of support delivered to the ALEC industry in the

6   aggregate;

7   6. The Plan includes consequences payable to individual ALECs

8   and consequences payable to a public fund identified by this

9   Commission;

10   7. The Plan includes a sound statistical methodology to make

11   performance determinations when measures have a retail

12   analog;

13   8. Benchmarks are established for measures that do not have

14   retail analogs;

15   9. The Tier II consequence calculation takes ALEC market

16   penetration levels into consideration; and

17   10. The consequences are applied at the submeasure level.

18

19   By adopting the ALEC's proposed Performance Incentive Plan

20   Version 2.0, this Commission can be assured that there is a sound

21   remedy plan in place to protect the end user - the Florida consumer.

22   This remedy plan will also assist in the rapid and sustainable

1   development of a competitive local telecommunications market in

2   Florida.

3

4   **ISSUE 4A: DOES THE COMMISSION HAVE THE LEGAL**

5   **AUTHORITY TO ORDER IMPLEMENTATION OF A SELF-**

6   **EXECUTING REMEDY PLAN?**

7   **ISSUE 4B: WITH BELLSOUTH'S CONSENT?**

8   **ISSUE 4C: WITHOUT BELLSOUTH'S CONSENT?**

9

10   Q.   DOES THE COMMISSION HAVE THE LEGAL AUTHORITY TO

11   ORDER A REMEDY PLAN IN FLORIDA?

12   A.   I am not an attorney, however, it is the ALEC Coalition's position that

13   the Commission does have authority under the Telecommunications

14   Act of 1996 to order the implementation of a self-executing remedy

15   plan without BellSouth's consent. This position will be fully discussed

16   in the post-hearing briefs filed by the parties.

17

18   Q.   DOES THAT CONCLUDE YOUR TESTIMONY?

19   A.   Yes.

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

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

3   Atlanta, Florida.

4

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

6   **BACKGROUND.**

7 **A.**   I am employed by AT&T as a Senior Policy Witness. My area of expertise is

8   the development of an effective methodology for measuring BellSouth's

9   performance in providing services to ALECs. My responsibilities include

10   developing Performance Measurements testimony and affidavits for

11   regulatory proceedings, as well as representing AT&T in performance

12   measurements workshops and hearings, including those held in Florida,

13   Louisiana, Florida, and North Carolina. I have held a variety of management

14   positions at AT&T over the last 19 ½ years, including the sale of large

15   business systems and telecommunications services, systems development for

16   operation support systems, and product marketing and technical support for

17   computer systems. I have a Bachelor of Science Degree from Johnson C.

18   Smith University and a Master of Science Degree from George Washington

19   University.

20

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

22 **A.**   The purpose of my testimony is to describe the deficiencies of BellSouth's

23   Self Effectuating Enforcement Mechanism (SEEM) and to discuss the

1 reasons it is not an appropriate remedy plan to ensure that the competitive

2 local telecommunications markets envisioned by the 1996 Act will develop

3 and survive in Florida. This testimony does not specifically target concerns

4 relating to the Staff Proposal (Strawman) given that Mr. Stallcup, the

5 Commission's Supervisor of the Economics and Forecasting Section in the

6 Division of Economic Regulation, has made clear that the Strawman does not

7 serve as a specific proposal for a performance plan, but a starting point for

8 the discussion as to what a performance plan should look like.

9

10 **Q.** **HAS THE FEDERAL COMMUNICATIONS COMMISSION (FCC)**

11 **PROVIDED ANY GUIDANCE FOR DETERMINING IF AN**

12 **ENFORCEMENT PLAN IS ADEQUATE?**

13 **A.** Yes. The FCC has identified the following key characteristics[1] for an

14 effective enforcement plan which are as follows:

15 • potential liability that provides a meaningful and significant incentive to

16 comply with the designated performance standards;

17 • clearly articulated, pre-determined measures and standards, which

18 encompass a comprehensive range of carrier-to-carrier performance;

19 • a reasonable structure that is designed to detect and sanction poor

20 performance when it occurs;

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

1   •   a self-executing mechanism that does not leave the door open

2   unreasonably to litigation and appeal; and

3   •   reasonable assurances that the reported data is accurate.

4

5 **Q. DOES BELLSOUTH'S SEEM COMPLY WITH EACH OF THE KEY**

6   **REQUIREMENTS SET FORTH BY THE FCC?**

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

8

9 **Q. HOW IS BELLSOUTH'S SEEM DEFICIENT WITH RESPECT TO**

10   **THE KEY REQUIREMENTS SPECIFIED BY THE FCC?**

11 **A.** BellSouth's SEEM does not provide for potential liability that is a

12   meaningful and significant incentive to comply with the designated

13   performance standards.

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

15   performance.

16   BellSouth's measures and performance standards do not encompass a

17   comprehensive range of carrier-to-carrier performance derived from a

18   collaborative process with ALECs.

19   BellSouth's SEEM does not provide reasonable assurances that the reported

20   data is accurate.

21

22 **Q. DOES BELLSOUTH'S SEEM PROVIDE FOR POTENTIAL**

23   **LIABILITY THAT IS A MEANINGFUL AND SIGNIFICANT**

1   **INCENTIVE TO COMPLY WITH THE DESIGNATED**

2   **PERFORMANCE STANDARDS?(ISSUES 11.A, 11.C3, 12.A, 12.C3)**

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

4   • SEEM's remedy calculation uses a factor that inappropriately

5   reduces BellSouth's liability.

6   • SEEM uses an inappropriate calculation methodology.

7   • SEEM includes an absolute cap.

8   • SEEM determines remedy amount based on transactions.

9   First, as a component of the SEEM design, the remedy calculation

10 uses a factor that inappropriately reduces BellSouth's liability. Use of this

11 factor, which is a slope of ¼ for even gross violations of parity, results in

12 BellSouth paying only a fraction of the maximum penalty amount. In other

13 words, the volume of transactions to which remedies would be applied is

14 reduced. Second, the actual remedy calculation methodology specified in

15 BellSouth's SEEM is inappropriate. This methodology, which determines

16 violations at the aggregate level and applies remedies at the disaggregated

17 level, is biased toward BellSouth. The SEEM calculation methodology

18 improperly excludes failed transactions from the cells with positive z scores,

19 even though these cells have already contributed to the aggregate z. The

20 result is that BellSouth will make smaller payments than if the volume

21 proportion, which is calculated from the state aggregate-z, is applied to all

22 cells. Therefore, BellSouth avoids paying remedies on all transactions that

23 represent a violation. BellSouth has included a number of steps in its

4

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

2   remedies.

3

4 **Q.** **DO ADDITIONAL CALCULATIONS IN SEEM REDUCE THE**

5   **REMEDY AMOUNT PAID BY BELLSOUTH? (ISSUE 11.C.3, 12.C.3)**

6 **A.** Yes. The Benchmark Adjustment Table in BellSouth SEEM is not consistent

7   with the ALECs. BellSouth's Benchmark Adjustment Table allows for

8   additional mitigation that is unnecessary and inappropriate. What this means

9   is that BellSouth can fail more transactions before a non-compliance

10   determination is made.

11

12 **Q.** **CAN SEEM PROVIDE A MEANINGFUL AND SIGNIFICANT**

13   **INCENTIVE FOR BELLSOUTH TO COMPLY WITH THE**

14   **DESIGNATED PERFORMANCE STANDARDS IF SEEM INCLUDES**

15   **AN ABSOLUTE CAP? (ISSUES 19.A, 19.B, 20)**

16 **A.** No. The inclusion of an absolute cap decreases BellSouth's incentive to

17   comply with required performance standards. This is because absolute caps

18   serve to wrongfully limit BellSouth's liability. BellSouth's SEEM includes

19   an absolute cap of 36% of BellSouth's net operating revenue for Florida.

20   Regardless of how severe BellSouth's discriminatory performance might be,

21   BellSouth would pay no further remedies once the cap is reached. (Coon Dir.

22   p. 49) Consequently, BellSouth has no continuing incentive to correct its

1   performance deficiency. With an absolute cap, BellSouth has the opportunity

2   to evaluate the "cost" of retaining its market share through non-compliance.

3   In order for a remedy plan to be a meaningful and significant incentive for

4   compliant behavior, the procedural cap specified in the Staff proposal would

5   be more appropriate. The procedural cap would avoid the problems of an

6   absolute cap and would not provide BellSouth with the opportunity to

7   evaluate the "cost" of retaining share through non-compliance. Moreover,

8   unlike absolute caps, procedural caps do not absolve BellSouth from

9   consequences of performance deterioration.

10   Under a procedural cap, BellSouth would continue paying remedies

11   into a state fund until the Commission determines whether there is

12   justification for exceeding the procedural cap. Thus, contrary to Mr. Coon's

13   testimony any payment made during the show cause hearing would be easily

14   recovered. Moreover, contrary to Mr. Coon's testimony the procedural cap is

15   not the beginning of the process for setting absolute caps. Rather, the

16   procedural cap affords BellSouth the opportunity to present the Commission

17   with evidence as to why it should not be required to continue paying

18   remedies beyond the procedural cap even though its performance continues

19   to deteriorate.

20

21   Q.   **IF SEEM DETERMINES REMEDIES BASED UPON TRANSACTION**

22   **VOLUMES, CAN SEEM PROVIDE FOR A MEANINGFUL AND**

1   **SIGNIFICANT INCENTIVE FOR BELLSOUTH TO COMPLY WITH**

2   **THE REQUIRED PERFORMANCE? (ISSUES 11.C.3, 12.C.3, 22)**

3   A.   No. Accruing remedies on a per transaction basis as set forth in SEEM

4   minimizes BellSouth's liability because a significant number of ALECs are

5   currently at embryonic level of activity.   The transaction volumes would be

6   very small and will not generate sufficient remedies to motivate compliant

7   behavior by BellSouth.

8   Remedies should accrue on a per measure basis.[2] As characteristic of

9   a measures-based plan, remedies should accrue at the level in which the

10   comparisons are made (i.e. at the measure/submeasure level). The remedy

11   amount is a direct function of the performance's departure from parity. The

12   measure-based plan does generate more remedies as the severity of the

13   discriminatory performance increases. Therefore, remedies should be applied

14   at the measure/submeasure level.

15   SEEM does not provide for potential liability that is a meaningful and

16   significant incentive to comply with designated performance standards. At a

17   time when ALECs are struggling to get into the local market, there would be

18   insufficient incentives to motivate non-discriminatory support. For this

19   reason, critical considerations such as Market Penetration Adjustments are

20   even more essential for ALECs to enter the market with new and advanced

21   services. Low ALEC penetration in the local market can be a good indication

22   that market suppression behaviors are occurring.

---

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

1   Low ALEC market penetration warrants the need for special incentives

2   (consequences for market suppression) to open local markets. BellSouth has

3   strong business incentives and means to maintain its current monopolies

4   through the delivery of inadequate levels of operations support for ALECs. If

5   the consequences are inadequate, then market entry by the ALECs will

6   definitely be suppressed due to discriminatory support by BellSouth.

7

8 **Q. ARE THERE OTHER RECOMMENDATIONS BY BELLSOUTH**

9   **THAT LIMIT THE POTENITAL LIABILITY THAT IS A**

10   **MEANINGFUL AND SIGNIFICANT INCENTIVE TO COMPLY**

11   **WITH THE DESIGNATED PERFORMANCE STANDARDS? (ISSUE**

12   **18)**

13 **A.**   Yes. BellSouth supports limitations of liability for such events as the

14   submission of orders in unreasonable quantities or times. The ALECs are

15   unclear as to what constitutes "unreasonable quantities". Additionally,

16   BellSouth's OSS (i.e. gateway abnormalities) may be the cause of orders

17   submitted in what is perceived by BellSouth to be "unreasonable quantities."

18   BellSouth's OSS's may also dictate the time when orders can be sent and

19   thereby received by BellSouth. As an example, the gateway may experience

20   an abnormality on Thursday and Friday which causes the orders to actually

21   be received in large sums on Saturday. BellSouth's liability should not be

22   limited in this scenario. The ALEC is not the cause of the problem.

23   BellSouth also highlights a *force majeure* event as rationale to limit their

1   liability. While this may in fact occur, there is no particular reason to

2   believe that such events would result in disproportionate impacts on ALEC

3   customers as opposed to BellSouth customers. Therefore, *force majeure*

4   events do not warrant automatic exclusion from otherwise applicable

5   consequence. If such events occur, BellSouth should be permitted to pursue

6   relief, but relief should not be automatic. Regardless of BellSouth's excuse,

7   it is inappropriate to have automatic exclusion from otherwise applicable

8   consequences in a self-effectuating remedy plan.

9

10 **Q.**   **DO THE MEASURES AND STANDARDS UPON WHICH SEEM IS**

11   **BASED ENCOMPASS A COMPREHENSIVE RANGE OF CARRIER-**

12   **TO-CARRIER PERFORMANCE AS A RESULT OF A**

13   **COLLABORATIVE PROCESS WITH ALTERNATIVE LOCAL**

14   **EXCHANGE CARRIERS? (ISSUE 2.A)**

15 **A.**   No. The measures in SEEM are not the result of a comprehensive

16   collaborative proceeding. The FCC has stated that an effective enforcement

17   plan should have clearly articulated, pre-determined measures and standards,

18   which encompass a comprehensive range of carrier-to-carrier performance.

19   BellSouth inappropriately excludes many of the BellSouth SQM measures

20   from its remedy plan. The narrow scope of measures will result in critical,

21   customer-impacting areas not being monitored or subject to remedies.

22

1   The measures in BellSouth's SEEM are a subset of the BellSouth SQM and

2   BellSouth independently selected this subset of measures for inclusion. This

3   is unlike what the FCC supported in the Bell Atlantic Plan:

4   We also believe that the scope of performance covered

5   by the Carrier-to-Carrier metrics is sufficiently

6   comprehensive, and that the New York Commission

7   reasonably selected key competition-affecting metrics

8   from this list for inclusion in the enforcement plan.[3]

9   In the 1999/2000 Louisiana Workshops, BellSouth, independent of

10   the ALECS, selected measures for inclusion in VSEEM III (upon which

11   SEEM is based) from its SQM, which the ALECs previously objected to as

12   being too narrow in scope. As an example, BellSouth ignored ALEC

13   requests for critical hot cut measures which can contribute to negative

14   customer impacts such as whether the FOC was issued in time to allow the

15   ALEC to perform essential activities

16

17   Q.   ARE THE 13 ADDITIONAL MEASURES REFERENCED IN MR.

18   COON'S TESTIMONY INCLUDED IN THE ENFORCEMENT PLAN?

19   No. Mr. Coon states that BellSouth has expanded the SQM to include 13

20   additional measures not specified in the Florida Staff proposal. Mr. Coon

21   does not, however, convey that fact that all of the 13 measures were not

22   included in SEEM. Mr. Coon neglects to mention, however, that BellSouth

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

- Coordinated Customer Conversion – Average Recovery Time
- Meantime to Notify ALEC of Network Outage
- Recurring Charge completeness
- Non-Recurring Charge Completeness
- Database Update Interval
- Database Update Accuracy
- NXX and LRNs Loaded by LERG Effective Date
- Notification of Interface Outages

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

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

1   **Q.**   **DOES BELLSOUTH EXCLUDE CRITICAL MEASURES IN ITS SQM**

2   **FROM SEEM?**

3   **A.**   Yes. BellSouth's SEEM limits monitoring of critical, customer-impacting

4   areas[5] of performance. As an example, SEEM does not specify LNP-FOC

5   Timeliness or LNP- Reject Interval as Enforcement measures. Without a

6   FOC, ALECs cannot provide their customers with an expected date of

7   service. End user customers are not willing to rely on providers who cannot

8   provide something as simple as a service due date in a timely manner. SEEM

9   will not allow BellSouth's performance to be monitored in this area. For

10   many facilities-based ALECs, LNP orders are a critical aspect of their

11   business and therefore monitoring Bellsouth's performance in this area is

12   critical to ALECs.

13

14   **Q.**   **DOES BELLSOUTH INAPPROPRIATELY EXEMPT SOME**

15   **ENFORCEMENT MEASURES FROM TIER I CONSEQUENCES?**

16   **A.**   Yes. BellSouth's SEEM inappropriately excludes the following Enforcement

17   measures[6] from Tier I remedies:

18   ▪   Invoice Accuracy

19   ▪   Mean Time To Deliver Invoice

20   ▪   Usage Data Delivery Accuracy

21   ▪   Reject Interval

---

[4] BellSouth Telecommuncations, Georgia Public Service Commission, June 29, 2000, Dave Coon's Direct Testimony, page17.
[5] See Additional Measures specified in Karen Kinard's Direct testimony.
[6] Enforcement Measures are SQM measures selected by BellSouth for inclusion in SEEM.

1   ▪ FOC Timeliness

2   This means that an individual ALEC can experience excessively long

3   intervals before receiving FOCs from BellSouth and BellSouth would not

4   incur any remedy. In other words, BellSouth can hinder an individual

5   ALEC's ability to provide their customers with timely notice of service

6   without a consequence to BellSouth. This is attributed to the fact that FOC

7   Timeliness for individual ALECs would not be monitored in SEEM. Unlike

8   a collaborative process for developing a remedy plan, BellSouth did not

9   include ALECs in Florida in making Tier I or Tier II measure designations.

10

11   Q.   **DOES SEEM HAVE THE ABILITY TO ADEQUATELY DETECT**

12   **AND SANCTION POOR PERFORMANCE?**

13   A.   No. The level of disaggregation is insufficient. The retail analogs are

14   inappropriate. The measures are inadequate and therefore   can hinder the

15   ability to detect discrimination. Additionally, SEEM includes an absolute

16   cap and a questionable methodology for invoking Tier II remedies which

17   decrease sanctions incurred by BellSouth.

18   The structure of the BellSouth SEEM can allow non-compliant

19   performance to be masked and not even subject to remedies. An effective

20   enforcement plan should have a reasonable structure that is designed to detect

21   and sanction poor performance when it occurs.

1   **Q.**   **CAN YOU ELABORATE ON HOW INSUFFICIENT**

2   **DISAGGREGATION HINDERS THE ABILITY TO DETECT POOR**

3   **PERFORMANCE?**

4   **(ISSUE 2.B)**

5   **A.**   Yes. The level of disaggregation in SEEM is inadequate and facilitates

6   consolidation of dissimilar products for comparisons. Disaggregation should

7   proceed to a level where like-to-like comparisons can be made. BellSouth

8   states that its position endorses "like-to-like" comparisons. However,

9   BellSouth's position is contradicted by the inadequate product

10   disaggregation that continues to be a characteristic of SEEM. Within SEEM,

11   BellSouth continues to aggregate some UNE loops together even though the

12   processes (i.e. intervals) for the various loops differ from one another. For

13   example, the interval for one DS1 Loops is 23 days and the interval for one

14   2-Wire Analog Loops is 4 days.[7] This level of disaggregation is insufficient

15   and does not contribute to "like-to-like" comparisons. Likewise, the product

16   disaggregation for enforcement measures in Staff's proposal is insufficient.

17   In his testimony, Mr. Coon emphasizes that BellSouth has more

18   disaagregation than that represented in the Staff Proposal. He further

19   expresses this by stating that Staff Proposal had 7 levels of disaggregation

20   for Reject Interval and that BellSouth had 17. What he failed to state is that

---

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

1   these 17 levels of disaggregation are absolutely meaningless to the remedy

2   plan. Specifically, the remedy plan only specifies one level of disaggregation

3   for the Reject Interval.

4   BellSouth proposes to rely upon overly aggregated results. Such

5   aggregation masks differences and makes detection of inferior performance

6   less likely. As discussed earlier, insufficient product disaggregation will

7   allow BellSouth to mask discrimination and thereby influence the type and

8   pace of developing competition. In SEEM, discrimination of high-

9   revenue/low volume products such as DS1s or DS3s can easily be concealed

10   given that they are consolidated with a dissimilar high volume product such

11   as Analog Loops.

12

13 **Q.**   **CAN YOU ELABORATE ON HOW INAPPROPRIATE RETAIL**

14   **ANALOGS HINDER THE ABILITY TO DETECT POOR**

15   **PERFORMANCE? (ISSUE 9)**

16 **A.**   Yes. On a measure such as Order Completion Interval, BellSouth can actually

17   report compliant support even though they are providing discriminatory

18   support in reality. As an example, the retail analog for OCI - UNE Loops are

19   Retail Residence & Business Dispatch. A significant percent of the UNE

20   Loop observations could be UNE Analog Loops which are all dispatch-in.

21   Dispatch-in signifies that the work is done within the Central Office.

22   Dispatch usually refers to service where the work is done in the field or

23   outside of the Central Office. Clearly, work done within the Central Office

1   has a shorter interval than work done away from the Central Office. Given

2   the retail analog is designated as Retail Residence & Business Dispatch,

3   BellSouth would always appear to be providing longer intervals for itself

4   (compliant support) for this example primarily because the retail analog is

5   inappropriate.

6

7   Q.   **CAN YOU ELABORATE FURTHER ON HOW SEEM FAILS TO**

8   **SANCTION POOR PERFORMANCE?**

9   A.   Yes. First, as stated earlier in my testimony, SEEM has an absolute cap that

10   limits the amount of remedies paid by BellSouth for discriminatory

11   performance. An absolute cap sends the signal that once BellSouth's

12   performance deteriorates to a particular level, then further deterioration is

13   irrelevant and results in no consequences if an absolute cap is established.

14   An absolute cap also provides BellSouth with the means to evaluate the cost

15   of market share retention through the delivery of non-compliant performance.

16   Thus, once BellSouth's performance deteriorates to a level where it reaches

17   the absolute cap, any further deterioration in Bellsouth's performance will not

18   generate remedy payments and will go unsanctioned, thereby removing the

19   incentive for BellSouth to provide compliant performance.

20   Second, BellSouth's SEEM bases compliance at the ALEC aggregate

21   level on 3 months of data. This 3-month aggregation of data will mask

22   discriminatory performance and will also allow non-compliance to occur

23   without a consequence. BellSouth could potentially have 2 consecutive

1 months of industry-wide, non-compliant performance and not incur any

2 consequences if the third month was complaint and the third month's

3 transactions were a larger volume than the previous 2 months. It is

4 unacceptable for ALEC customers to receive deplorable service for two

5 consecutive months and BellSouth not face some consequences. Industry

6 level performance should be assessed for each month's activities.

7 Aggregating results across ALECs within a single month already makes

8 detection of discrimination more difficult, due to likely greater variation in

9 the underlying data. To further dilute the ability to detect discrimination with

10 the possibility of additional averaging across 3 months is simply an attempt

11 by BellSouth to avoid the application of otherwise appropriate consequences.

12 Additionally, it appears that there are no special consequences for chronic

13 violations at the industry level in SEEM.

14

15 Q. **ARE THE MEASURES IN SEEM SUFFICIENT IN SCOPE TO**

16   **MONITOR FOR BACKSLIDING?**

17 A. No. BellSouth proposes an inadequate set of measures and, as a result,

18   backsliding can occur in many operational areas without any consequence.

19   The measures set forth by BellSouth do not cover the full scope of ILEC

20   support required for unfettered local market competition to develop. Many

21   potentially important aspects of performance will not be examined due to the

22   inadequate set of measures represented in the BellSouth proposal.

23   BellSouth's SEEM measures are inadequate to determine discriminatory

17

1   performance and should be augmented by the measures requested by the

2   ALECs and included in Ms. Kinard's direct testimony. BellSouth's current

3   SEEM proposal only includes a subset of measures reflected in the BellSouth

4   February 2001 SQM filed in Florida.

5   BellSouth's SEEM omits measurements that are critical to assuring

6   non-discrimination. Any remedy plan must cover all forms of operational

7   support required by the Act. Both blatant (directly and immediately customer

8   observable) and subtle discrimination (ALEC operational support) will

9   ultimately impact customers. Due to the many omitted measures,

10   BellSouth's SEEM does hinder sanctions for non-compliance.

11

12   Q.   **DOES SEEM PROVIDE REASONABLE ASSURANCES THAT THE**

13   **REPORTED DATA IS ACCURATE.**

14   A.   No. SEEM incorporates an audit to certify the current year aggregate level

15   reports for both BellSouth and the ALECs. SEEM, however, does not require

16   a comprehensive audit of BellSouth's performance measurement data

17   collection, storage, retrieval and reporting processes, along with end-to-end

18   tracking of orders through BellSouth's systems and processes to ensure that

19   reported performance is accurate. An effective enforcement plan would

20   require a comprehensive performance measurement audit to provide

21   reasonable assurances that the reported data and performance are accurate.

22   BellSouth states that an auditing firm will certify that the Tier I and

23   Tier II remedies were paid. It is even more critical that an auditing firm

24   confirm that BellSouth has indeed appropriately calculated remedies and

18

1   properly invoked remedies that would be commensurate with the performance

2   rendered to each ALEC and the industry at large.

3

4 **Q.**   **ARE REMEDIES FOR LATE, INCOMPLETE AND INACCURATE**

5   **PERFORMANCE REORTING INCLUDED IN OTHER REMEDY**

6   **PLANS APPROVED BY THE FCC? (ISSUES 6.A, 6.B, 5.A, 5.B)**

7 **A.**   Yes. The SWBT remedy plan includes a payment for late and incomplete

8   performance reports. Specifically, the SWBT plan includes a payment of

9      $5000.00 per day past the due date and $1000.00 per day for each missing

10   performance report. Remedies should be assessed and paid by BellSouth to

11   the Commission for late, inaccurate and incomplete reports. ALECs have

12   already experienced late submission of performance reports by BellSouth.

13   Additionally, the performance reports have even been inaccurate and

14   incomplete.

15

16 **Q.**   **WHEN SHOULD BELLSOUTH BE REQUIRED TO MAKE**

17   **PAYMENTS FOR TIER I AND TIER II NONCOMPLIANCE ?**

18   **(ISSUE 13)**

19 **A.**   Payment should be on or before the 15th business day following the due date

20   of the reported performance results upon which consequences are based.

21   Waiting an additional forty-five days, as recommended by BellSouth, seems

22   completely unreasonable.

23

19

1 **Q.** **DOES BELLSOUTH INHIBIT THE ALECS' ABILITY TO**

2 **VALIDATE REPORTED PERFORMANCE? (ISSUES 3.A, 3.B)**

3 **A.** Yes. Even BellSouth admits to not providing all the raw data needed by

4 ALECs to validate BellSouth's reported performance. (Coon Direct

5 Testimony, p.16). BellSouth is currently not providing access to raw data for

6 a number of measures such as the following:

7 Ordering

8 • LNP_PCT_Reject_Interval_Service_Requests_Total_Me

9 ch.txt

10 • LNP_PCT_Reject_Interval_Service_Requests_Partial_

11 Mech.txt

12 • LNP_PCT_Reject_Interval_Service_Requests_Fully_Me

13 ch.txt

14 • LNP_Reject_Interval_Service_Requests_Total_Mech.txt

15 • LNP_Reject_Interval_Service_Requests_Partial_Mech.t

16 xt

17 • LNP_Reject_Interval_Service_Requests_Fully_Mech.txt

18 • LNP_Firm_Order_Confirmation_Total_Mech.txt

19 • LNP_Firm_Order_Confirmation_Partial_Mech.txt

20 • LNP_Firm_Order_Confirmation_Fully_Mech.txt

21 Provisioning

22 • LNP_Total_Order_Cycle_Time_Mechanized.txt

1   •   LNP_Total_Order_Cycle_Time_Mechanized_with_App

2   ointment_codes.txt

3   •   LNP_Percent_Missed_Installation_Appointments.txt

4   •   LNP_Disconnects.txt

5   Billing

6   •   Invoice Accuracy CLEC(Region)

7   •   Mean Time to Deliver Invoices CLEC(Region)

8   •   Usage Data Delivery Accuracy CLEC

9   •   Usage Timeliness & Completeness CLEC

10

11   For many facilities-based ALECs, LNP orders are a critical aspect of their

12   business. Therefore, BellSouth prohibits ALECs from validating the reported

13   performance due to inhibiting access to LNP data. An effective remedy plan

14   should provide performance reports and the supporting raw data for all

15   measures in the plan.

16

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

18 **A.**   Yes. Root cause analysis is a useful procedure for building actions plans for

19   unacceptable performance and should be incorporated within a performance

20   measurement system, but should not serve as a vehicle for delaying or

21   otherwise avoiding payment of identified performance failures. Performance

22   failures can have detrimental effects on Florida's consumers. Procedures,

23   such as root cause analysis, which could potentially remedy recurrence of

1　　　failures, are definitely essential. Root cause analysis can and should be

2　　　implemented such that the self-effectuating aspect of the remedy plan is not

3　　　impacted.

4

5　**Q.**　**SHOULD IMPLEMENTATION OF A REMEDY PLAN ADOPTED BY**

6　　　**THIS COMMISSION BE DELAYED UNTIL AFTER BELLSOUTH**

7　　　**RECEIVES 271 APPROVAL? (Issue 8)**

8　**A.**　No. The remedy plan should go into effect as soon as it is ordered by this

9　　　Commission so that the benefits of its effect on the marketplace can be

10　　　realized. The plan can be used to measure compliance, so that the state

11　　　regulators can make the appropriate recommendation to the FCC. Also, the

12　　　performance measurement systems should be tested prior to 271 approval, so

13　　　that any backsliding can be deterred. Further, putting the remedy plan in

14　　　effect immediately would illustrate to regulatory authorities that BellSouth is

15　　　committed to irreversibly opening the local market to competition.

16

17　**Q.**　**WAS SEEM CREATED THROUGH AN INDUSTRY**

18　　　**COLLABORATIVE?**

19　**A.**　No. BellSouth did not request that ALECs contribute their ideas in the

20　　　establishment of SEEM which is based on VSEEM III. Many of the

21　　　components, such as measures, remedy calculation and even the parameter

22　　　delta value, of SEEM were decided independently by BellSouth. As an

23　　　example, the workshops during the Louisiana proceeding did not address the

1   value of parameter delta. It is obvious that SEEM components are a

2   BellSouth decision since ALEC coalitions through out the region have

3   consistently disagreed with BellSouth's position on the value of parameter

4   delta, transaction-based nature of SEEM and the absolute cap contained in

5   SEEM.

6

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

8 A. No. BellSouth's SEEM proposal will not provide adequate incentives, as

9   their cap implies, to prevent or correct "backsliding" performance. The

10   measures included in SEEM do not provide the necessary information

11   regarding support activities essential to the development of competition. In

12   the few instances where BellSouth proposes to permit examination of its

13   performance, it offers inadequate levels of disaggregation that afford

14   BellSouth the opportunity to mask discrimination. Further, BellSouth's

15   SEEM includes a cap on remedies which allows BellSouth to escape

16   consequences for discriminatory performance. BellSouth also applies a

17   calculation methodology that eliminates failed transactions which are subject

18   to remedies.

19   The FCC has set forth a framework for analyzing the reasonableness

20   of a proposed enforcement plan, which included 5 key aspects that a

21   performance assurance plan should include. BellSouth's SEEM clearly falls

22   outside this prescribed zone of reasonableness. Therefore, this Commission

23   should not adopt BellSouth's SEEM.

1   **Q.**   **DOES THIS CONCLUDE YOUR TESTIMONY?**

2   **A.**   Yes.

1   BY MR. PRESCOTT:

2   Q   Would you please provide the Commission with a summary

3   of your testimony?

4   A   Yes, I will. Good morning, Commissioners. I am here

5   today to discuss the self-executing remedy plan that this

6   Commission should adopt in this docket to ensure that BellSouth

7   provides ALECs with support that is in parity with performance it

8   provides to its own retail operation. This Commission can best

9   protect the Florida consumers by adopting the remedy plan

10   proposed by the ALECs. The ALEC remedy plan will also assist in

11   the rapid and sustainable development of a competitive local

12   telecommunications market in Florida. BellSouth's remedy plan

13   will not allow this Commission to meet these goals.

14   BellSouth is in the unique position of being both the

15   supplier and main competitor of ALECs. Consequently, BellSouth

16   has a strong business incentive and the means to maintain its

17   current monopoly on the local market through the delivery of

18   inadequate and unlawful levels of operational support to ALECs.

19   BellSouth has the capability of seriously affecting an

20   ALEC's ability to enter the local market and successfully serve

21   its customers. Thus, an appropriate self-executing enforcement

22   mechanism is absolutely necessary to assure that the competitive

23   local telecommunications market envisioned by the

24   Telecommunications Act of 1996 will be able to not only develop,

25   but also thrive in Florida.

1   The objective of any remedy plan adopted by this

2 Commission is to establish appropriate incentives to motivate

3 BellSouth to provide ALECs with a level of service that allows

4 them to compete equally with BellSouth for customers in the local

5 market. Therefore, the incentives must cover the full landscape

6 of BellSouth activities upon which ALECs must rely to deliver

7 their own retail offerings and be set at a level such that the

8 economic consequences to BellSouth for providing noncompliance

9 service exceeds any benefit BellSouth may derive by inhibiting

10 competition.

11   My testimony explains that BellSouth's self-executing

12 enforcement mechanism, SEEM, is deficient in a number of ways

13 that should preclude this Commission from adopting this plan.

14 The six key deficiencies of SEEM include, first, BellSouth uses

15 an inappropriate methodology to calculate remedies. The

16 BellSouth methodology allows BellSouth to violate the standard

17 for a measure and yet not subject the transactions in violation

18 to a remedy. Stated differently, BellSouth has a transaction

19 based plan, but BellSouth does not pay for all the failed

20 transactions for a submeasure that is determined to be

21 non-compliant.

22   Second, the plan inappropriately caps BellSouth's

23 liability. This means that regardless of how bad BellSouth

24 misses the mark, and regardless of how bad a level of service

25 BellSouth provides to ALECs and their customers, BellSouth will

1   never pay over the capped amount. A cap does not incent

2   BellSouth to change its performance to meet the benchmark or

3   retail analog. Rather, it inappropriately allows BellSouth to

4   make a business decision on whether or not improving performance

5   is financially more viable than paying the preset capped penalty.

6   Third, the plan allows BellSouth to provide

7   non-compliant support to all of the ALECs and not even be subject

8   to remedies for a given month. When a non-compliant

9   determination is made based on the aggregate of all ALEC data for

10   a particular submeasure, that non-compliant determination is

11   considered an industry violation. BellSouth could potentially

12   pay no remedies for industry violations even though they have

13   been in violation at the industry level for eight months of the

14   year.

15   Fourth, the performance measurements that are included

16   in BellSouth's plan are insufficient to fully reveal if

17   BellSouth's performance to ALECs is nondiscriminatory. This

18   Commission would therefore not have what it needs to make

19   accurate performance determinations.

20   Fifth, BellSouth's plan does not provide for a

21   continuing audit of the performance measurement data upon which

22   the remedies are based. Thus, there would be no independent

23   review of the actual processes that produce source data

24   ultimately used for performance determinations, reporting and

25   remedy calculations.

1   Sixth, and finally, BellSouth's plan would not apply

2 until after 271 relief is granted. As shown by the testimony of

3 Mpower, COVAD, and e.spire, the ALECs need assistance now. ALECs

4 should not have to file a complaint with the Commission, wait to

5 prefile testimony, wait to have a hearing, wait to submit briefs,

6 and wait for a decision on customer impacting issues when

7 BellSouth is currently not performing as required by applicable

8 performance standards. Because of these deficiencies, I urge

9 this Commission to adopt the performance incentive plan proposed

10 by ALECs.

11   The ALEC plan, which is explained in my prefiled direct

12 testimony, should be adopted for the following reasons: First,

13 the ALEC plan is a comprehensive plan crafted on sound principles

14 that comply with the FCC guidelines for an effective enforcement

15 plan. Second, the ALEC plan has several tiers which escalate

16 consequences for continued violations. This structure

17 appropriately incents BellSouth to comply with the standards set

18 by this Commission. The ALEC performance incentive plan includes

19 all measures needed to allow this Commission as well as ALECs to

20 measure BellSouth's performance with regard to all parts of

21 customer experiences.

22   Fourth, the ALECs' plans consequences escalate with

23 increased level of severity of violations. This is very

24 important because extreme violations are even more damaging to

25 ALEC customers and should be remedied at a higher level. The

1 ALEC performance incentive plan provides for two separate

2 evaluations, the quality of support delivered to each individual

3 ALEC, and the quality of support delivered to the ALEC industry

4 in aggregate. The ALEC plan includes consequences payable to

5 individual ALECs and consequences payable to a public fund

6 identified by this Commission. This is important because it

7 alleviates any concerns relating to ALECs gaming the system.

8 Sixth, the ALEC performance incentive plan includes a

9 sound statistical methodology to make performance determinations

10 when measures have a retail analog. Therefore, the possibility

11 of random variation is addressed in making performance

12 determinations.

13 Seventh, benchmarks are established for measures that

14 do not have retail analogs. Not all measures have established

15 retail analogs. However, monitoring is still essential.

16 Providing benchmarks provides BellSouth with the performance

17 standards that will allow ALECs a meaningful opportunity to

18 compete.

19 Eighth, the Tier 2 consequence calculation takes ALEC

20 market penetration levels into consideration. This specifically

21 provides extra incentives for BellSouth to provide compliant

22 support when ALEC market penetration is very low and eliminates

23 special incentives when ALEC market penetration reflects levels

24 that demonstrate the existence of a true competitive local market

25 in Florida.

1   By adopting the ALECs' proposed incentive plan, this

2   Commission can be assured that there is a sound remedy plan in

3   place to protect the end user, the Florida consumer. This remedy

4   plan will also assist in the rapid and sustainable development of

5   a competitive local telecommunications market in Florida. You.

6   MR. PRESCOTT: The witness is available for questions.

7   CHAIRMAN JACOBS: Any cross, JALECs? Mr. Carver.

8   MR. CARVER: Yes, sir, thank you.

9   CROSS EXAMINATION

10 BY MR. CARVER:

11   Q   Good morning, Ms. Bursh.

12   A   Good morning.

13   Q   My name is Phil Carver and I represent BellSouth.

14 First of all, I want to understand how the ALEC testimony is

15 being presented. As I understand it, Ms. Kinard, who testified

16 earlier, is supporting the ALECs' proposed measures, the

17 submeasures, and the disaggregation. And your portion of this is

18 that you are supporting the penalty plan, is that correct?

19   A   Yes.

20   Q   In the context of the penalty plan, would you agree

21 with me that the same failure by BellSouth should not be

22 penalized twice?

23   A   Yes.

24   Q   And it is your position, I believe, that all of the

25 measures that are proposed by the ALECs are in areas that affect

1 customers, is that correct?

2   A   Yes. All the measures that are proposed, being

3 proposed do have customer affecting impacts.

4   Q   And in some cases, however, there is no direct affect

5 on the customer, would you agree?

6   A   No, I think customers are impacted directly.

7   Q   In every instance?

8   A   Yes.

9   Q   All right. What about with invoice accuracy, do you

10 believe customers are directly impacted in that instance?

11   A   Yes, I do.

12   Q   Do you have a copy of your deposition with you from

13 last week?

14   A   Yes.

15   Q   Please turn to Page 11 of your deposition. Do you see

16 at Line 18 there is a question from staff. Are you there?

17   A   I'm searching for it now.

18   Q   Okay.

19   A   Okay.

20   Q   There is a question by staff, and this is just sort of

21 the setup so we can identify the subject area. It says could you

22 please explain why invoice accuracy should be included in the

23 enforcement mechanism. Do you see that?

24   A   Yes, I do.

25   Q   Now, let's go to the next page, 12, Line 13. Question

1   by Mr. Fudge, "So this is one of those measures that impacts

2   customers indirectly."

3   "Answer: You could say that."

4   Is that the testimony you gave last week?

5   A   Yes, it is the testimony.

6   Q   Now, I want to understand your position on correlation.

7   As I understand it, it is your position that without an industry

8   developed evaluation process that would take place at some point

9   in the future, you really can't know whether particular measures

10 are correlated or not, is that correct?

11   A   Yes. Without the proper analysis done there is no way

12 to substantiate correlation amongst measures.

13   Q   Okay. So I guess your position is that until that

14 process is gone through in the future, measures would be treated

15 in the interim as though they are not correlated, correct?

16   A   No. Our position is that we, as an industry, need to

17 jointly develop a correlation analysis mechanism by which we can

18 appropriately determine whether or not measures are, in fact,

19 correlated so that we will have an effective and appropriate

20 performance plan here in Florida.

21   Q   I understand that. But by question is until that

22 happens at some point in the future, is it your position that all

23 of the measures should be considered to not be correlated until

24 that determination is made?

25   A   Well, as I stated previously, no determination on

1   correlation can be made until such time as we engage in that

2   analysis.

3   Q   Let me ask -- I'm sorry, I didn't mean to interrupt.

4   A   No. Which it would impact the effectiveness and

5   appropriateness of any plan that is decided upon. So I think it

6   is critical that that particular process be engaged in.

7   Q   Did you hear Mr. Stallcup testify Wednesday in response

8   to a question by Mr. Lackey that the measurements for mean held

9   order interval for average completion interval and for total

10   service order cycle time are correlated, did you hear him say

11   that?

12   A   I don't recall it.

13   Q   In response to a series of questions that I asked Ms.

14   Kinard, did you hear her also state that these three measures are

15   correlated?

16   A   I just don't recall everything I heard on Monday, I'm

17   sorry.

18   Q   Well, the record will reflect what they testified, but

19   rather than our debating it, let me just put it this way. For

20   purposes of my question, assume that we have three measures and

21   assume that BellSouth believes they are correlated, and the staff

22   believes they are correlated, and the ALEC expert on measurements

23   believes they are correlated. Is it your position that we still

24   can't treat those as correlated until there is some sort of an

25   industry process that would occur in the future?

1   A   Yes, that is still my position. Because even though

2   measures can't -- the analysis that we would engage in once we

3   develop this mechanism would also include us determining what

4   level of correlation is significant enough to say that you are

5   measuring the same thing. So just because there is some

6   correlation, it may not be a significant enough level of

7   correlation to warrant not having remedies being subjected to

8   each of those measures.

9   Q   Well, what if the degree of correlation is sufficient

10   enough so that if one measure has failed there will automatically

11   be a failure of a second measure in every single instance, is

12   that enough correlation to decide that there should be some

13   adjustment made?

14   A   I have no expertise in developing correlation analysis

15   mechanisms, so I would prefer not to respond to that question.

16   Q   Okay. In the ALEC plan, penalties are applied at the

17   submeasure level, is that correct?

18   A   Yes, they are.

19   Q   And in the ALEC plan, every single submetric carries

20   with it a penalty, correct?

21   A   No. Every submeasure does not carry a penalty if there

22   is no activity associated with that particular submeasure.

23   Q   Okay. Well, let me clarify my question. If every

24   single submeasure, if there is activity and if there is a

25   violation, there would be a penalty for that violation, correct?

1   A   Yes.

2   Q   So, for example, if there are 75,000 submeasures there

3 would be a penalty for failure for every single one of the 75,000

4 if it occurred, correct?

5   A   No, in response to the question. You didn't -- no.

6 You didn't say that they were non-compliant, you just said --

7   Q   Well, if I didn't, I meant to. So let me try again. if

8 there are 75,000 penalties -- I'm sorry, if there were 75,000

9 submetrics, each and every violation of every one of those 75,000

10 submetrics would carry with it a penalty under your plan,

11 correct?

12   A   Yes.

13   Q   And if the failure is severe, the penalty would be

14 $25,000 per month per ALEC, correct?

15   A   Yes.

16   Q   Now, how did you establish $25,000 as the maximum

17 penalty?

18   A   Well, we were looking to have penalty amounts

19 established that would actually incent or motivate BellSouth to

20 comply in terms of providing support to the ALECs so that we

21 could provide quality support to the consumers.

22   And just to give an analogy in terms of setting fines,

23 I am often reminded about in Georgia we have what is called the

24 HOV lane. Everybody I'm sure if you have traveled to Georgia you

25 know our traffic is horrendous, it is ridiculous. And you can

1 sit in traffic probably two hours trying to get home. But they

2 establish the HOV lane, but the key is you can only get in the

3 HOV lane and bypass the traffic if you carpool. It has to be at

4 least two people, two or more people in the car.

5   And what the State of Georgia did was they set a fine

6 that if I, Cheryl, if I get in the HOV lane and I am not car

7 pooling, I don't have any other passengers in the car with me, I

8 incur a $500 fine. And so that $500 fine, it doesn't cost the

9 State of Georgia $500 for me to get in the HOV lane, but what --

10 but they know that $500 is enough -- knowing that you may have to

11 pay $500 if you get in that lane inappropriately is enough to

12 convince people not to get in the that lane unless they are car

13 pooling. Because, of course, car pooling is what they are trying

14 to motivate.

15   And I think if you think of that particular analogy you

16 can think of what the ALECs were going through as we try to

17 develop an amount to incent BellSouth in the case, $25,000 for

18 the most severe level of violation. It was thought to be enough

19 of an incentive to get BellSouth to provide compliant support.

20 It may not be enough, because if you go back to the HOV

21 illustration for me as a worker in Georgia, $500 is a lot of

22 money to pay just because I was trying to get in this HOV lane.

23 But for Ted Turner maybe $500 is not enough. So in the case of

24 BellSouth, maybe 25,000 is not enough. But we were looking for

25 an amount that we thought would be significant enough to incent

1   proper behavior.

2   Q   In Georgia is a violation for driving in the HOV lane

3    $500 or is it $150?

4   A   500 was what I understood it to be.

5   Q   Okay. You're sure it's not 150?

6   A   I was just told 500.

7   Q   Okay.

8   COMMISSIONER DEASON: Mr. Carver, do you have any

9   evidence that it is 150? I mean, did you get caught?

10   MR. CARVER: I have never been caught in those

11   instances when I have driven in the HOV lane. So, no, I don't.

12   But I was curious. I mean, if traffic gets heavy, I wanted to

13   know.

14   (Laughter.)

15   BY MR. CARVER:

16   Q   As I understand your position, you are saying that

17   $25,000 is what you think is sufficient to motivate BellSouth, is

18   that correct?

19   A   We are hopeful that it is.

20   Q   So you are not claiming that $25,000 corresponds to

21   some economic harm to the ALEC, are you?

22   A   No.

23   Q   How did you pick $25,000 as opposed to 20,000, or

24   28,000, or 32,000?

25   A   As I mentioned earlier, we just collectively decided

1 that 25,000 would be the amount. Again, it may be that the

2 25,000 is enough and it may not be enough.

3   Q   Did you do any sort of a study, or analysis, or a

4 calculation to arrive at 25,000 specifically?

5   A   No.

6   Q   So, basically, the ALECs just kind of got together and

7 said, well, 25,000 sounds good, let's try that. Is that

8 basically the process?

9   A   No. The ALECs looked at what was happening to their

10 business, and we are all being impacted negatively, and

11 collectively thought that 25,000 may be enough to incent

12 BellSouth to provide compliant support.

13   Q   But what I'm getting at is 25,000 is basically just

14 your opinion. You have no analysis to support the idea that

15 25,000 is exactly the right amount, correct?

16   A   Correct.

17   Q   And -- well, I think I asked this question in regard to

18 25,000, but let me ask you generally as to all of the various

19 penalties in your plan. You are not claiming that any of these

20 reflect the economic loss to the ALEC in any specific way, are

21 you?

22   A   No. And I think that is because the economic cost to

23 us is almost impossible to pinpoint. So it's not a fixed amount

24 per person per violation.

25   Q   And I'm just using this as an example, but one of the

1   measures that I believe proposed by the ALECs is timeliness of

2   response to request for BellSouth to CLEC trunks. And it's on

3   Page 11 of Ms. Kinard's Exhibit 4. And the standard that is

4   listed there is a benchmark. It's 95 percent in seven days. And

5   so I can just understand the way your plan would work, for a

6   particular transaction if BellSouth responded in seven days and

7   five minutes, that would be a miss?

8   A   Hold on one second, I'm trying to find the measure.

9   Q   Okay. It's Exhibit KK-4, Page 11.

10   A   Just let me read it, please, if you don't mind.

11   Q   Okay. And if you look at the very bottom, that is

12   where the benchmark is.

13   A   The question?

14   Q   Yes. The measure is 95 percent in seven days. So my

15   question is if in one particular instance it took BellSouth seven

16   days and five minutes to provide this information, under your

17   plan that would be a miss, correct?

18   A   Yes, it would. But BellSouth would have had seven days

19   to provide the response, and we may have had a large customer

20   account that we need -- a large customer account at stake, and we

21   wouldn't want to be committing that we would have capacity for a

22   customer like a Delta unless we had some assurance that we could

23   get our -- build our capacity to support their need.

24   Q   Well, if BellSouth provides you that assurance in seven

25   days and five minutes as opposed to seven days, do you believe

1　　that causes you some sort of harm?

2　　　　A　　I think we are always harmed when we don't get

3　　commitments responded to in a timely fashion. When we wait an

4　　extensive period of time for just basic information so that we

5　　could determine whether or not we can provide customers --

6　　service to a customer, or give a customer something as basic as a

7　　due date.

8　　　　　　Because to most customers -- I mean, I have been in

9　　sales most of my career. I am a software developer also, but was

10　　in sales probably for 12 or 15 years between AT&T and IBM. And I

11　　just can't imagine not being able to give a customer something as

12　　simple as a due date. It is already competitive in the

13　　marketplace trying to provide -- you know, sell with different

14　　competitors in the marketplace, and then you can't even give

15　　something as basic as a due date. It would be surprising that

16　　any of them would do business with any of us ALECs because we

17　　have to wait so long for just a minimal piece of information like

18　　a due date.

19　　　　Q　　But in this particular instance the ALECs have made the

20　　determination that seven days is an appropriate amount of time.

21　　So I assume that if you can get -- if you can get the advice of

22　　the due date in seven days then you could serve your customers.

23　　So my question is if it is seven days and five minutes, do you

24　　believe that is going to have some negative impact on your

25　　ability to serve your customer?

1   A   Yes.

2   Q   So that extra five minutes makes all the difference?

3   A   Well, what made the difference was BellSouth not

4 providing the response in the committed time frame.

5   Q   Okay. But if they had provided the response in 6 days,

6 23 hours, and 55 minutes that would have been fine, it wouldn't

7 have harmed your customer, and you would have been able to

8 conduct your business, correct?

9   A   But benchmarks are set at a level that provides ALECs

10 with a meaningful opportunity to compete. And so by not meeting

11 the commitment, basically BellSouth has put the ALECs in a

12 position of not being able -- not being able to compete in the

13 marketplace.

14   Q   Well, my question doesn't go to the benchmark. I'm not

15 asking about the 95 percent, I'm asking about the interval. And

16 I just want to be sure I understand your position. Since the

17 ALECs are proposing seven days, your position is that if we

18 complied and gave you the information in five minutes less than

19 seven days, you could conduct your business. But if we are five

20 days (sic) over the seven day limit, then that is going to create

21 some inability for you to serve your customers, is that your

22 position?

23   A   Yes. And it's probably impacting our business to not

24 get it in five days versus having to wait seven, but we are

25 having to just do the best we can with the intervals that we

1 have.

2   Q   So in your view you have proposed an interval that is

3 already going to cause a negative impact on your business?

4   A   Well, it could.

5   Q   Okay. The general point I'm getting to is that in the

6 ALEC plan there is a very bright line. If there is a particular

7 interval, if there is a particular performance standard, if it is

8 missed by any small amount, that counts as a miss. There is no

9 forgiveness, correct?

10   A   That's not true, because the very nature of the

11 benchmark, you are getting forgiveness. It wasn't 100 percent of

12 the responses provided in seven days, it was 95 percent. So five

13 percent of those are not even provided in seven days.

14   Q   Okay. Well, again, we are not talking about that part,

15 we are at an earlier stage in the process. We will get to the

16 benchmark in just a moment. But what I'm talking about now is

17 the way you count hits or misses, if you will. Acceptable

18 performance and unacceptable. And across the board in the ALEC

19 plan, let's say you have got an interval of three hours. If

20 BellSouth performs in three hours and five seconds, that is a

21 miss, correct?

22   A   Would you repeat that again, I'm sorry.

23   Q   Yes. Again, we are not talking about the benchmark, we

24 are talking about the part in which we are tabulating particular

25 events and whether BellSouth meets the standard or not. And the

1 question I'm asking you is under the ALEC plan if an interval,

2 for example, is three hours and it takes BellSouth three hours

3 and five seconds, that counts as a miss for that particular

4 transaction, correct?

5   A   Yes.

6   Q   Now, in your plan, the minimum penalty is $2,500,

7 correct?

8   A   Yes.

9   Q   And did you do any sort of study or calculation that

10 allowed you to reach the conclusion that any violation by

11 BellSouth will necessarily result in $2,500 of harm to the ALEC?

12   A   As I had stated previously, we had set specific dollar

13 amounts based on what we felt would be an amount that would

14 incent or motivate BellSouth to provide compliant support.

15   Q   And is $2,500 then just the ALECs' opinion as to where

16 it should be?

17   A   Probably it would be the Commission who would set the

18 final dollar amount. But the ALECs view that 2,500 could, in

19 fact, incent BellSouth to provide compliant support. It may not

20 be enough.

21   Q   Okay. But at this point it is the ALECs' best guess,

22 right?

23   A   It is the ALECs' best representation of what may be

24 appropriate to motivate BellSouth to provide compliant support so

25 we can satisfy our customers.

1   Q   All right. Thank you. Now I would like to talk a

2 little bit about benchmarks. Did you hear -- well, let me ask

3 you, do you know if the lowest benchmark in the ALEC plan is 95

4 percent?

5   A   I would have to look at our benchmarks. I don't recall

6 that being the lowest one. I'm not sure.

7   Q   Well, I tell you what, actually I covered that with Ms.

8 Kinard on Wednesday. So since that is not exactly your part, we

9 don't need to go through it again. For purposes of my question

10 let's just assume that we are dealing with a 95 percent

11 benchmark.

12   A   Okay.

13   Q   So if you will accept that for the next few questions.

14 If BellSouth's performance to a particular ALEC for a month were

15 94.99 percent with a 95 percent benchmark, that would be a

16 failure, correct?

17   A   Yes. That means that you would have -- more than 5

18 percent of our customers would have been served at a level. That

19 does not prevent us -- provide us a meaningful opportunity to

20 compete.

21   Q   And what would be the penalty in that particular

22 instance?

23   A   That would be the 2,500.

24   Q   Okay. Now to make that determination wouldn't you have

25 to go through the calculation that is on Table 3 of Exhibit 1 on

1   Page 15?

2   A   Yes, you would.

3   Q   Okay. Now, you came up with that 2,500 number pretty

4   quickly. Did you go through that whole formula in your head that

5   is listed there under applicable consequences?

6   A   No, I looked at another table.

7   Q   Okay. Well, as I understand your testimony from your

8   deposition last week, to determine the amount of a penalty, you

9   would have to apply this formula that takes up two lines in the

10   box on Page 15, is that correct, that formula would have to be

11   applied to determine the penalty?

12   A   Yes, the formula is applied to determine penalties.

13   Q   Okay. So, 2,500 you just took from a chart somewhere

14   that has already applied the formula?

15   A   Well, again, two things. One, I could look at a chart

16   that we had that is in the form, but you actually determine the

17   penalty amount by applying the formulas that are in the remedy

18   calculation tables.

19   Q   Okay. We are still assuming a 95 percent benchmark.

20   If BellSouth delivers performance to the ALEC at 90 percent, that

21   is a severe failure, correct?

22   A   Yes, it is.

23   Q   And that would prompt a $25,000 penalty, correct?

24   A   Yes, it would.

25   Q   Now, on Wednesday did you hear Ms. Kinard tell us that

1   as a result of disaggregation that there will likely be some

2   submetrics with very small numbers in them?

3   A   I don't recall her specifically saying that, but that

4   could be true.

5   Q   Yes. I think what she said in response to a question

6   was that there might be some submetrics with no activity at all,

7   there might be some with one or only two measurable events. Does

8   that refresh your recollection about what she said?

9   A   I remember there may be some with no activity at all.

10   Q   Okay. The small amounts of activity, that is the part

11   you don't remember her saying?

12   A   She testified I think it was on Tuesday, I just can't

13   remember everything she said verbatim.

14   Q   Okay. Well, the record will reflect what she said, and

15   I'm not trying to test your memory. So take this next question

16   as a hypothetical if you want. We are still using a 95 percent

17   benchmark. In any submetric with four events or less, a single

18   failure by BellSouth will result in BellSouth failing that

19   submetric and paying a penalty, correct?

20   A   That is not correct.

21   Q   It's not?

22   A   No.

23   Q   Okay. Well, you have told me that each penalty, each

24   event -- you told me the submetrics are going to have -- if there

25   is one event in the submetric and BellSouth fails it would pay a

1 penalty, correct?

2   A   Would you repeat the statement?

3   Q   Okay. Let me try it a different way. If we have four

4 events and BellSouth fails one of them, then that is a

5 performance level of 75 percent, correct?

6   A   Yes.

7   Q   And with a 95 percent benchmark, 75 percent is going to

8 be a failure, correct?

9   A   Not in our plan because of the benchmark adjustment

10 table.

11   Q   You are referring to the table on Page 14 of 52 in

12 Exhibit 1?

13   A   Yes, I am.

14   Q   Okay. Now, as I read that table it appears that the

15 benchmark, regardless of sample size, would only be adjusted down

16 to 80 percent, is that correct?

17   A   No. In this particular one it was adjusted -- for a

18 sample size of five it was adjusted to 80 percent.

19   Q   Well, on the table on Page 14 it begins with five,

20 correct?

21   A   Yes.

22   Q   There is nothing indicated for four, or three, or two,

23 or one, is there?

24   A   It's not contained here, but BellSouth would be allowed

25 to miss one.

1   Q   Okay. So what you are telling me is that this chart

2   doesn't accurately reflect the way your plan would work?

3   A   I didn't say that.

4   Q   Okay. But that's what I'm asking you. Because in the

5   chart it appears that the lowest adjustment would be to 80

6   percent. So -- well, let me ask you to confirm that first of

7   all. In this chart there is no number here smaller than 80

8   percent, is there?

9   A   There is no number smaller than 80 percent because with

10   a sample size of five, having missed one you wouldn't need to go

11   any lower than 80 percent. But had you put a sample size of 4

12   here and 75 percent, it would have been appropriate.

13   Q   Okay. Well, the chart doesn't list anything for one,

14   or two, or three, or four, does it?

15   A   No, it does not.

16   Q   Okay. Are you saying -- I want to make sure I

17   understand what you are saying. You are saying that under your

18   plan there would be adjustments to below 80 percent for one, or

19   two, or three, or four, it's just that this chart doesn't reflect

20   that, is that right?

21   A   BellSouth -- what our plan provides is for BellSouth at

22   the lowest sample sizes, even though a given benchmark percent

23   has been set, if meeting that particular benchmark can only be

24   accomplished by BellSouth having perfect performance, meaning not

25   missing one, then we would always adjust down such that they can

1   meet the benchmark without having had perfect performance.

2   Q   My question was a little bit different, though, because

3   I wanted to try to see if I can align what you are saying with

4   what this chart shows. So, again, let me ask you. The chart

5   shows five events, it doesn't go below that. And it shows 80

6   percent, it doesn't go below that. So are you saying that your

7   plan really does have greater levels of adjustment, if you will,

8   for one, or two, or three, or four, but it's just not reflected

9   on the chart, is that what you are saying?

10   A   Yes.

11   Q   Okay. So if the sample size is four, what would you

12   adjust the benchmark down to?

13   A   Probably 75 percent.

14   Q   You say probably; are you sure about that?

15   A   I mean, it's a matter of just doing -- I would have to

16   do the math.

17   Q   Okay. Well, the reason I ask is because, again, the

18   evidence that you have submitted ends at 80 percent. So if you

19   are telling us that there is more forgiveness for even smaller

20   sample sizes, then I would like to know precisely what that is.

21   And if you can't tell us, that's fine. But I just want to be

22   sure that if you are going to give us numbers that you are

23   certain about them. So, with that understanding, for four it

24   would be 75 percent?

25   A   I think what is important to note is that -- and I said

1 it previously, but I will say it again. If obtaining the

2 benchmark percent can only be done by BellSouth having perfect

3 performance, meaning missing -- have no failed transactions, then

4 there will be an adjustment made so that BellSouth can miss one

5 and still be considered compliant. I think that is really the

6 rule.

7   Q   Yes, ma'am. And I think we understand the rule. What

8 I'm asking you is since your chart doesn't cover it, exactly how

9 you would apply that rule, because I think we need to know what

10 the standards are. Now, again, are you able for one, two, three,

11 and four to tell me what the percentages would be?

12   A   Not sitting here, no, I cannot.

13   Q   Okay. Can you describe to me the calculation that you

14 would go through to do that? Is there a formula, for example?

15   A   I would divide the sample size by one, the sample size

16 into one.

17   Q   Okay. And is that formula stated anywhere in the plan?

18   A   No, it's not. You mean the verbiage?

19   Q   Yes. I mean, and again, you are describing to me

20 something that is not on the chart that is attached to your

21 testimony, so I'm just asking you --

22   A   I think the chart is illustrative of a method, and it

23 is the method I have tried to articulate.

24   Q   I understand. And you have given us the formula for

25 smaller sizes. So what I'm asking you is is that formula set

1 forth in any of the documents that you have filed?

2   A   Give me one second, please. The information is not

3 expressed, per se, as I have conveyed it, but is implicit in what

4 is contained on Page 14 that is entitled applying adjustment for

5 small data sets where necessary.

6   Q   Okay. And you're talking specifically about this first

7 paragraph that is labeled Number 2 on Page 14?

8   A   Yes.

9   Q   That is the part that you believe it is implicit in?

10   A   Yes.

11   Q   Okay. I believe you testified in your deposition that

12 you personally have gone through the process of determining the

13 number of submeasures in the ALEC plan. Do you recall that?

14   A   Yes, I do.

15   Q   And I think what you told me was that by your

16 calculation the total number of submetrics is 10,000 exactly. Do

17 you recall that?

18   A   I recall saying that.

19   Q   Did you create a document to show how you arrived at

20 that number, the 10,000?

21   A   There was no formal document prepared.

22   Q   Okay. So you didn't do anything like Mr. Coon's

23 Exhibit DACR-1, for example, of the chart that would show what

24 you multiply by what to get that?

25   A   I may have had some scratch information, but not a

1 formal document that was --

2 Q   And you don't have any sort of notes or any sort of

3 written record of how you did that calculation, is that correct?

4 A   No.

5 Q   Did you hear Ms. Kinard say on Wednesday that for some

6 types of disaggregation she wouldn't know the number of

7 categories without getting the information from BellSouth?

8 A   I think I recall her saying that.

9 Q   And did you hear her say specifically that for volume

10 she wouldn't know how many categories to use without looking to

11 BellSouth's product interval guide?

12 A   Yes.

13 Q   Okay. When you did your calculation, what process did

14 you use to determine the appropriate number for volume?

15 A   I looked at the product interval guide.

16 Q   So you have a copy of BellSouth's product interval

17 guide?

18 A   Yes, I do.

19 Q   And what number did you use?

20 A   I used three.

21 Q   And for the trouble type, did you hear her say

22 Wednesday that for trouble types she would have to look to the

23 trouble codes that BellSouth uses?

24 A   Yes, I recall that.

25 Q   And you did your calculation, I guess, sometime before

1   your deposition last week, correct?

2   A   Yes.

3   Q   And when you did your calculation, did you have a copy

4   of the sheets that show BellSouth's trouble disposition codes?

5   A   No, I did not.

6   Q   Okay. So, how did you determine how many trouble codes

7   to use?

8   A   I had omitted that, so it was not included.

9   Q   Okay. So you just left that one out?

10   A   Inadvertently.

11   Q   Are there any others that you inadvertently left out?

12   A   Yes.

13   Q   Okay. Which ones?

14   A   MSA.

15   Q   That would be geography?

16   A   Yes.

17   Q   What else?

18   A   I can't remember everything, but I did determine that

19   there were some omitted.

20   Q   Okay. Well, I think there are seven more categories

21   that we haven't discussed, so let me just go through each one and

22   if you can tell me the number you used. Interface type?

23   A   I believe I used three.

24   Q   Preorder query type?

25   A   This is difficult to do because I don't have the sheet

1   that I was working with in front of me, but I --

2   Q   If you don't remember what you did, that's fine, but

3   I'm trying to see how someone could come up with 10,000. And I

4   understand you don't have the written documents or any notes, but

5   to the extent you remember what you did, I would appreciate it if

6   you could tell me. Again, if you can't, that's fine. So for

7   preorder query type?

8   A   I think what I did with preorder query type was to take

9   the queries that were in BellSouth's SQM.

10   Q   You just don't remember the number?

11   A   Not off the top of my head. I think it was seven, but

12   I can't remember. I can't be exact.

13   Q   Okay. Let's go back to geography for a second. If you

14   were going to do geography, you would use 13, correct?

15   A   I thought it was 11, but if you say 13 --

16   Q   Well, there are 11 MSAs, but I assume you would want

17   something for all of the areas in the state that aren't in an

18   MSA, so that would be 12. I mean, you would want that kind of

19   information, wouldn't you?

20   A   Well, we had specified MSA, so I thought there were 11

21   MSAs.

22   Q   Okay. Well, MSA, of course, stands for metropolitan

23   service area. So if you only take the 11 MSAs, you are only

24   going to know what kind of service you are getting in the

25   metropolitan areas. So my assumption is you might want to serve

1 some rural customers, so you might want to know what is happening

2 outside of the major cities. Now, if I'm wrong about that, if

3 you don't need that, I guess it would be 11. But is that

4 information you would want?

5 　　　A　　I'm sure it's information that would be necessary.

6 　　　Q　　So that is 12. And you would probably also want one

7 that has the state total?

8 　　　A　　I'm sorry?

9 　　　Q　　Would you also want by geography something that had all

10 the state or would you just want the breakdowns?

11 　　　A　　Beyond MSA, I'm not familiar with the others. There

12 have not been any other areas that we have been --

13 　　　　　　MR. CARVER: I'm sorry. I just had a severe failure

14 here. I will work around it.

15 　　　　　　CHAIRMAN JACOBS: It must be catching.

16 　　　　　　MR. CARVER: It must be. I'm going to move to the left

17 of the puddle and I will continue.

18 BY MR. CARVER:

19 　　　Q　　Product. How many categories did you use for product?

20 　　　A　　It depends on the measure, but 41.

21 　　　Q　　And for service order activity, how many did you use?

22 　　　　　　MR. PRESCOTT: Chairman Jacobs, if I might impose an

23 objection at this point. I think Ms. Bursh has made clear that

24 in her calculation she omitted certain things that should have

25 been included. And there is no dispute that that number --

1 excuse me, the number that she initially provided omitted things

2 and is therefore inaccurate.

3   So I think to continue along this line is just a waste

4 of our time. I think it's clear that she has indicated there was

5 error in her initial calculation, that she omitted certain things

6 that should have been included. And this is just redundant.

7   MR. CARVER: Well, I didn't realize they were taking

8 that position, so I was trying to find out exactly what she did.

9 At this point if they are basically saying that they will

10 stipulate that her 10,000 number is inaccurate, then I will

11 accept that.

12   THE WITNESS: Yes, uh-huh.

13   MR. PRESCOTT: We will.

14   MR. CARVER: Very well. Thank you. Then I have

15 nothing further.

16   CHAIRMAN JACOBS: Very well. Staff.

17   CROSS EXAMINATION

18 BY MR. FUDGE:

19   Q   Good morning, Ms. Bursh.

20   A   Good morning.

21   Q   Were you here yesterday when Mr. Allen enumerated

22 several specific examples of the problems COVAD was having with

23 BellSouth?

24   A   Yes.

25   Q   And do you remember that Commissioner Palecki asked

1 BellSouth and COVAD to work together to see what the penalty

2 payments would be under BellSouth's plan for those specific

3 examples?

4   A   Yes.

5   Q   Do you think that if you were to work with BellSouth,

6 that you could develop how much the penalties would be under the

7 ALEC plan?

8   A   Yes. If BellSouth will make available the entry data

9 points we would need, we would be glad to do it. But they have

10 the critical data. You need to know the BellSouth results as

11 well as the COVAD results.

12   MR. LACKEY: Mr. Chairman, on behalf of BellSouth we

13 are already committed to getting whatever information we can. We

14 are still trying to determine what is available, I'm assuming.

15   THE WITNESS: Does that mean that BellSouth will

16 provide us the data points we would need so that we could apply

17 the calculations to determine the remedies?

18   MR. LACKEY: BellSouth is committed to providing all

19 the data necessary, assuming we have it. We just don't know yet

20 what is available. We understand what the exercise is and we are

21 going to cooperate. Anything we have got, anything anybody needs

22 to make the calculation.

23   CHAIRMAN JACOBS: Staff, is this going to be an exhibit

24 you are going to request?

25   MR. FUDGE: Yes, sir. We would like to have a

1 late-filed exhibit designated as Exhibit 26.

2 CHAIRMAN JACOBS: It sounds like the exhibit is going

3 to be prepared by the witness, but requires information from

4 BellSouth?

5 MR. FUDGE: Yes, sir.

6 CHAIRMAN JACOBS: Can we get timetables? It sounds

7 like you've got to come back and tell us --

8 MR. LACKEY: Mr. Coon went back to Atlanta on the 6:00

9 o'clock flight this morning, and they are trying to figure out

10 right now what it is going to take to do it and how long we can

11 get it done. As I told you last evening, one of the problems we

12 have is that one of the key players left to get married today.

13 So I can't get him and can't get an answer. But they have

14 promised to have me some sort of a response before the end of the

15 day about what we have got and what we can do.

16 CHAIRMAN JACOBS: Very well. So we will identify this

17 as Late-filed Exhibit 26. And we will saddle back up at the end

18 of the day and figure out the scheduling on it. Do you want to

19 give it a title?

20 MR. FUDGE: ALEC penalty plan for COVAD examples.

21 (Late-filed Exhibit 26 marked for identification.)

22 CHAIRMAN JACOBS: Okay.

23 BY MR. FUDGE:

24 Q Ms. Bursh, will you please turn to Page 38 of your

25 direct testimony?

1   A   Okay. I'm on 38.

2   Q   Would you please read Lines 16 through 19?

3   A   Yes. "If the ILEC fails to remit a consequence payment

4 by the 15th business day following the due date of the data and

5 the reports upon which the consequences are based, then it should

6 be liable for accrued interest for every day that the payment is

7 late."

8   Q   Are you proposing that this method be applied to both

9 Tier-1 and Tier-2 disputes?

10   A   Tier-1 and Tier-2 disputes, or --

11   Q   Payments.

12   A   If the payments are received late, it should apply for

13 both Tier-1 to this -- yes.

14   Q   Ms. Bursh, in your testimony you stated that payments

15 should be on or before the 15th business day following the due

16 date of the reported performance results upon which consequences

17 are based. And in Mr. Coon's direct testimony, Page 43, Lines 6

18 through 16, he designated the method by which the payments would

19 be made. For example, for Tier-1 it would be by check to the

20 ALEC, and for Tier-2 it would be by check to the Treasury. Do

21 you agree with that method of payment for Tier-1 and Tier-2

22 noncompliance?

23   A   In terms of the form of payment being a check?

24   Q   Yes.

25   A   Yes.

1   Q   You were asked earlier about small sample sizes. Were

2   small sample size -- or if sample sizes are small, compliance for

3   measures with benchmarks should be determined using the

4   adjustment table for a 95 percent confidence interval, is that

5   correct?

6   A   No. That particular approach which I think you are

7   referring to as the BellSouth adjustment table, the ALECs feel

8   that it provides for an additional level of mitigation. They are

9   allowed to fail more, provide more noncompliance support before a

10   remedy would be incurred.

11   Q   Do you agree that the ALEC sample benchmark adjustment

12   table is not a statistical appropriate?

13   A   Yes.

14   Q   Why is a nonstatistical approach superior to a

15   statistical approach?

16   A   Well, we feel that the approach presented by the CLECs

17   or the one contained in the CLEC plan does not provide for

18   additional levels of mitigation because we feel that mitigation

19   has already been provided for in the setting of the benchmark

20   itself. For instance, you are not asking for 100 percent of

21   orders to be completed in two days, you are asking for 95

22   percent. So five percent are going to be allowed to not meet

23   that interval anyway.

24   Q   In BellSouth's proposed penalty payment mechanism, do

25   you agree that the penalty is based on some estimate of the

1   number of discriminatory transactions?

2   A   Could you repeat that one more time?

3   Q   Sure. In BellSouth's proposed penalty payment

4   mechanism, do you agree that the penalty is based on some

5   estimate of the number of discriminatory transactions?

6   A   To be honest, I'm not sure what it is based on. I just

7   know that they pay on -- very few transactions are in violation.

8   Q   Does BellSouth propose to estimate the total number of

9   transactions that did not receive parity service or only the

10   portion of transactions for which disparate service was detected?

11   A   Could you say that one more time?

12   Q   Sure. Does BellSouth propose to estimate the total

13   number of transactions that did not receive parity service or

14   only the portion of transactions for which disparate service was

15   detected?

16   A   For some reason I need -- could you read it a little

17   bit slower just one more time. I'm trying -- for whatever reason

18   I'm missing the point of the question.

19   Q   Okay. Does BellSouth's plan propose to estimate the

20   total number of transactions that did not receive parity service

21   or only the portion of transactions for which disparate service

22   was detected?

23   A   There is something in that question, I'm not able to

24   respond. I can't -- I'm not understanding the question. Could

25   you restate it maybe a different way, if you would, please.

1   Q   In BellSouth's plan they are estimating the total

2   number -- they are estimating the number of discriminatory

3   transactions based on the total -- based on a portion of the

4   transactions for which disparate service was detected.

5   A   So you are saying are they basing their payment on a

6   portion of the transactions that are in violation, is that the

7   first part of question?

8   Q   Yes, only the ones that they detected that disparate

9   service occurred.

10   A   I know they are not paying on all the transactions that

11   incurred a violation for sure, based on the illustrations that

12   they have in their documentation and that Dave Coon found.

13   Q   Do you believe that this is appropriate?

14   A   No.

15   Q   Okay. Would you please refer to Mr. Coon's Exhibit 6,

16   Page 4. It provides a calculation for Tier-1 remedies.

17   Ms. Bursh, how would these calculations need to be changed to

18   estimate the total number of transactions that did not receive

19   parity service?

20   A   I'm really unable to provide any recommendation, you

21   know, respond to that question.

22   Q   Okay. That's fine. Go ahead.

23   A   No, you go ahead.

24   Q   In the ALECs' proposed penalty payment mechanism, do

25   you agree that penalties are based on the presence of

1 discrimination in a particular measure where the greater

2 penalties as the statistical certainty of discrimination

3 increases?

4   CHAIRMAN JACOBS: Could I get you to slow down just a

5 little bit, Mr. Fudge.

6   MR. FUDGE: I'm sorry.

7 BY MR. FUDGE:

8   Q   In the ALECs' proposed penalty payment mechanism, do

9 you agree that the payments -- that the penalties are based on

10 the presence of discrimination in a particular measure with

11 greater penalties as the statistical certainty of discrimination

12 increases?

13   A   Yes.

14   Q   The previous question that I asked about how the

15 calculation needs to be changed, who would be best able to answer

16 that question?

17   A   I don't think that just here in the hearing room we

18 could formulate that kind of a recommendation. I think it would

19 take some time and thought and engage some technical people into

20 what that modification would need to be. I do know that it is

21 inappropriate, because when I look at the effect on this

22 particular sheet that 96 of the -- that there were 96 violations,

23 and of the 96 violations only 29 were remedied. There is

24 something terribly inappropriate about that. As to how it should

25 be changed, that would be something, again, that couldn't be done

1   here in this particular forum, but in a different venue.

2   MR. FUDGE: Thank you, Ms. Bursh.

3   THE WITNESS: Thank you.

4   CHAIRMAN JACOBS: Questions, Commissioners. Redirect.

5   I'm sorry, Commissioner Palecki.

6   MR. PRESCOTT: Ms. Bursh, can you --

7   CHAIRMAN JACOBS: Commissioner Palecki has some

8   questions.

9   MR. PRESCOTT: Oh, I'm sorry.

10   COMMISSIONER PALECKI: On the issue of disputes

11   regarding penalties, you believe the Commission should settle all

12   of these disputes. And I'm concerned that there may be very many

13   of them and that this might occupy the Commission on a full-time

14   basis handling disputes between the ALECs and BellSouth. Do you

15   have any other type of dispute resolution mechanism that might

16   save this Commission from making resolution of disputes on these

17   measures a full-time business?

18   THE WITNESS: Well, I definitely don't want this to be

19   a full-time business for you, because I know your time can be

20   better spent attending to other matters. I would think the only

21   proactive thing we can do is just to make sure that the plan is

22   as close to self-executing as possible and that we put the time

23   and effort into a plan that would take away some of the disputes.

24   I think, you know, if you have a good solid plan maybe that could

25   eliminate the disputes, because it would be clear to all parties

1   that the remedy that was incurred or not incurred was, in fact,

2   correct. So I think having a more -- having a plan be approved

3   by this Commission that is, in fact, a truly effective remedy

4   plan is going to be probably the only proactive -- or the most

5   proactive thing that we can do.

6   COMMISSIONER PALECKI: I guess what I'm concerned about

7   is there are some areas, provision of incorrect information, for

8   example, that might not fit into an exact category for one of the

9   measures. And I can anticipate that there could be many

10 disputes. Would you have any objection to a process that would

11 have an impartial third party make the first determination prior

12 to the Commission itself being asked to resolve these issues?

13   THE WITNESS: Well, since I am representing the ALEC

14 coalition, I probably would need to go back and -- and we meet on

15 a regular basis, but take it to the coalition.

16   COMMISSIONER PALECKI: And there is already in place

17 for consumer complaints a process where there are first informal

18 dispute mechanisms where the Commission staff will hear a dispute

19 prior to the Commission itself making a resolution. Would that

20 be a possible means of working through disputes without asking

21 the Commission to make these decisions?

22   THE WITNESS: Just speaking for myself, and I would

23 think for AT&T, that seems reasonable. But, again, I hope that

24 we can have a plan that is going to eliminate some of the

25 disputes. And another thing we can do is begin to as we have

1   disputes, and hopefully they will be very few, begin to document

2   them and, you know, retain information on kind of once we see

3   them, we have one, figure out how did it come about so that we

4   can go in and incorporate something in our remedy plan such that

5   we could eliminate that happening in the future.

6   So I think we can -- we can learn from the disputes as

7   we go forward so that we don't continue to have the same

8   disputes. And we could also learn from also what is happening in

9   other parts of the region and share that information, you know,

10 amongst the different states. I think that will be helpful, too,

11 because we will all be at different points.

12   COMMISSIONER PALECKI: Thank you. Now, if this

13 Commission wanted to approve a plan that was somewhere between

14 the BellSouth plan and the ALEC plan, what are the most important

15 areas that the Commission should look at? And limit it to three

16 or four. I don't want to hear a laundry list of all of them.

17   THE WITNESS: First of all, I think -- I know the

18 dollar amount for missing a measure, and I'm not talking about a

19 particular measure, but missing a measure, it needs to be correct

20 and appropriate enough to eliminate the inappropriate or

21 noncompliant behavior. I think that just has to happen. That no

22 matter what you fail, the key is not failing any measures, not

23 plan to fail these two because they don't cost me as much. But

24 the ones that maybe impact me the most, I won't fail there.

25 That's not going to help us as CLECs. But I think ensuring that

1 we have incentive amounts per measure that are enough to deter

2 BellSouth from providing noncompliant support. I think that is

3 essential, otherwise it's going to be chaos.

4   And, secondly, covering all the areas upon which the

5 ALECs rely upon BellSouth. I mean, they are really our

6 competitor, but yet we are dependent on them and we can't deliver

7 quality service without using part of that infrastructure. So,

8 making sure that the measures cover the right scope of activities

9 upon which the CLECs must rely.

10   COMMISSIONER PALECKI: Having worked for a utility, I

11 have concerns with regard to customer retention. When I worked

12 for the utility I worked with, which was a small natural gas

13 utility, we had certain customers we considered key customers and

14 we would retain those customers at all cost.

15   Now, I guess I'm concerned about where there are very

16 large customers that are important to the utility, that there

17 will be a conscious decision to take the penalty in order to

18 retain the customer. In order to make sure the ALEC isn't able

19 to serve the customer. What sort of remedy would you have in

20 mind under a circumstance like that?

21   THE WITNESS: Well, I am equally concerned because I

22 supported national accounts when I was in sales, and it only

23 takes one major disaster to lose a Delta Airlines or a Georgia

24 Power. It's kind of difficult, because if you lose --

25   COMMISSIONER PALECKI: Well, I guess what I'm saying,

1   if you have a million-dollar-a-month customer, as a utility you

2   might very well be willing to pay several thousand dollars or ten

3   of thousands of dollars in penalties in order to retain that

4   customer. And is there a possible solution to that problem?

5   THE WITNESS: As I sit here I can't devise one that

6   will keep the plan self-executing and also keeping in mind

7   that -- you know, I'm sure staff wants one that is not too

8   complex to administer. But, I mean, that is the situation.

9   Because when you lose those big customers, everybody knows about

10 it. So you didn't really lose just -- and I use Delta, it didn't

11 have to be a Delta, but it could be Macy's for that matter. But

12 when I lose that customer, it's all other major accounts that may

13 leave me because they feel that I'm unreliable. But just through

14 my experience with -- I'm sorry, you were talking.

15   COMMISSIONER PALECKI: I was just saying those are the

16 customers that all of the ALECs as well as BellSouth are going to

17 be fighting for.

18   THE WITNESS: Well, I hope we are competing for all the

19 customers. Not just the big ones, but all of them. Because all

20 of them are important, but some clearly once you lose that

21 business it is more impacting.

22   COMMISSIONER PALECKI: I'm sorry, I interrupted you.

23 Could you finish your answer, please.

24   THE WITNESS: I forgot, I'm sorry. Oh, I know what I

25 was going to say. I just remember when I was in sales and I used

1   to implement -- well, PBXs and those kind of things, also. But

2   at that time we didn't ever put customers out of service and

3   things like that. That was just unheard of. Although it is

4   being more prevalent now because of the situation that we

5   currently find ourself in. But one thing I know for sure, this

6   is why I think we should have -- I mean, each measure needs to be

7   equally weighted in terms of the penalty for missing it is

8   significant. It's one thing to make a mistake with a big

9   customer, but when do you it over and over they are not going

10 tolerate it. They don't have to. And that is the thing.

11   It's not like you can do it one time, it may be that

12 you made the mistake in doing, you know, provisioning, maybe put

13 somebody out of service, which is awful. But, anyway. But then

14 let's say that happened, two months later they finally halfway

15 trust you, then they decide to migrate the rest of their

16 facilities over and something happens in the migration. And

17 sometimes in migrations you have a D and an N order, a disconnect

18 and a new. And you did the migration and the disconnects

19 happened, but lo and behold, the new order -- not the new, but

20 the part of the order that reestablishes the service gets lost.

21 Then we are definitely out. They are not going to do business

22 with us. They are going to get rid of us as fast as they can.

23   COMMISSIONER JABER: Before Commissioner Palecki leaves

24 that question about the large customer, explain to me the

25 Department of Justice's role. It seems to me that if any Bell

1   company targets the large customer like that and makes a decision

2   that might indicate willful behavior to be anticompetitive, isn't

3   that where the Department of Justice would kick in?

4   THE WITNESS: I'm not sure, but I think that, again,

5   there are subtle -- and I'm not being negative or whatever, but I

6   just know from being in that market and being in tech support and

7   being in the market fulfilling service -- provisioning service

8   for customers, the way that you can discriminate is so subtle.

9   It's not like you -- it's very overt. So maybe that does kick

10   in. But by the time you get it to the Department of Justice I

11   can imagine that you have lost at least half of your customers.

12   It's just not enough time. That process is too extensive to be

13   beneficial.

14   COMMISSIONER PALECKI: Thank you.

15   THE WITNESS: I'm sorry I couldn't given you a good

16   answer for the last question.

17   CHAIRMAN JACOBS: Redirect.

18   REDIRECT EXAMINATION

19   BY MR. PRESCOTT:

20   Q   Ms. Bursh, will you turn to Page 14 of your first

21   exhibit.

22   A   I'm on 14.

23   Q   Do you remember Mr. Carver questioning you about the

24   benchmark chart?

25   A   Yes.

1   Q   And he asked you some questions about where it was

2   indicated that it would be -- sample sizes smaller than five

3   would be taken into consideration?

4   A   Yes.

5   Q   And on the line above the table, there is an indication

6   for a footnote?

7   A   Yes, Footnote 16.

8   Q   Could you read that footnote, please?

9   A   Footnote 16 on Page 15 reads, "The table can be

10   expanded to include all possible data set sizes from one upward."

11   Q   And is that what you were trying to explain in

12   reference to the sample size of four that he proffered?

13   A   Yes.

14   MR. PRESCOTT: I have nothing further.

15   CHAIRMAN JACOBS: Exhibits.

16   MR. PRESCOTT: I would move Exhibit 25 into the record.

17   CHAIRMAN JACOBS: Without objection show Exhibit 25 is

18   admitted. And 26 is late-filed. Thank you, Ms. Bursh. You are

19   excused. Next witness.

20   Why don't we take ten minutes while we are transition.

21   (Exhibit 25 admitted into the record.)

22   (Brief recess.)

23   CHAIRMAN JACOBS: Go back on the record. Mr. Prescott,

24   you may call your next witness.

25   ROBERT MICHAEL BELL

1   was called as a witness on behalf of AT&T Communications of the

2   Southern States, Inc., and, having been duly sworn, testified as

3   follows:

4   DIRECT EXAMINATION

5   BY MR. PRESCOTT:

6   Q   Would you state your name for the record, please?

7   A   My name is Robert Michael Bell.

8   Q   And what is your address?

9   A   180 Park Avenue, Florham Park, New Jersey 07932.

10   Q   And by whom are you employed?

11   A   By AT&T.

12   Q   In what capacity?

13   A   I work at AT&T Labs Research in the statistics research

14   department. And I guess my title is principal member of

15   technical staff.

16   Q   Doctor Bell, did you cause to be prepared and filed 15

17   pages of direct testimony and 9 pages of rebuttal testimony?

18   A   Yes, I did.

19   Q   Do you have any changes or corrections to make to your

20   prefiled direct testimony?

21   A   No.

22   Q   Do you have any changes to your rebuttal testimony?

23   A   No.

24   Q   If I asked you the same questions today, would you

25   answer -- would your answers be the same as in your prefiled

1   direct and rebuttal testimony?

2   A   Yes.

3   MR. PRESCOTT: I would request that the testimony be

4   entered in the record as if read.

5   CHAIRMAN JACOBS: Without objection show his testimony

6   entered in the record as though read.

7   MR. PRESCOTT: Thank you.

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

2   **A.**   My name is Robert M. Bell. My business address is AT&T Labs-

3   Research, 180 Park Avenue, Florham Park, New Jersey 07932.

4

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

6   **BACKGROUND.**

7   **A.**   I received a Ph.D. in Statistics from Stanford University in 1980. From

8   1980 to 1998, I worked as a statistician at RAND, a non-profit

9   institution that conducts public-policy analysis. While at RAND, I

10   supervised the design and/or analysis of large multi-site evaluations in

11   the fields of preventive dentistry, drug prevention, and depression

12   care. I also headed the RAND Statistics Group from 1993 to 1995

13   and taught statistics in the RAND Graduate School from 1992 to 1998.

14   Since 1998, I have worked in the Statistics Research Department at

15   AT&T Labs-Research. I have authored or co-authored 50 refereed

16   articles on statistical analysis that have appeared in a variety of

17   professional journals. I am a fellow of the American Statistical

18   Association. I currently serve on the Panel to Review the 2000

19   Census organized by the National Academy of Sciences.

20

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

22   **A.**   My testimony describes the statistical methodology the Florida Public

23   Service Commission should adopt for use in comparing BellSouth's

1 performance provided to itself and its affiliates with the performance it

2 provides to Alternative Local Exchange Companies (ALECs). I also

3 recommend an appropriate range for the parameter delta used in

4 connection with the statistical methodology. (Issues 11.C.1 and 2;

5 12.C.1 and 2)

6

7 **Q.** **WHY ARE STATISTICAL TESTS USEFUL TOOLS?**

8 **A.** Merely reporting averages of performance measurements alone,

9 without further analysis, does not indicate whether differences in

10 performance results for ALEC customers versus a retail analog reflect

11 actual discrimination or simply random variation. Once appropriate

12 measures and comparison samples have been established, statistical

13 tests compare the size of observed differences with the amount that

14 could be expected to occur by chance under conditions of true parity

15 of service. These comparisons help to determine quantitatively

16 whether BellSouth has provided nondiscriminatory treatment to

17 ALECs for measures with a retail analog. The FCC supported the use

18 of statistical comparisons in its Bell Atlantic Order for New York. _See_

19 _In the Matter of Application of Bell Atlantic for Provision of In-Region_

20 _InterLATA Services In New York_, CC Docket No. 99-295 (December

21 23, 1999), Appendix B, Para. 2&4, where FCC stated:

22 When making a parity comparison, statistical analysis is

23 a useful tool to take into account random variations in

1   the metrics. In the Second BellSouth Louisiana Order,

2   we encouraged BOCs to submit data allowing us to

3   determine if any detected difference between the

4   wholesale and retail metrics is statistically significant.

5

6   Q.   **WHAT SHOULD THIS COMMISSION ORDER CONCERNING THE**

7   **STATISTICAL METHODOLOGY TO BE USED IN EVALUATING**

8   **PARITY?**

9   A.   There are two things that should be included in the Commission's

10   order. First, the Commission should select the appropriate statistic for

11   making parity determinations. My testimony explains that the modified

12   z is the most appropriate statistic for this purpose. Second, the

13   Commission should set the value of a parameter "delta," which is

14   needed to compute a balancing critical value, at no higher than 0.25

15   for all submeasures. The modified z statistic compared with a

16   balancing critical value based on a parameter delta no higher than

17   0.25 for all submeasures will enable this Commission to detect lack of

18   parity in BellSouth's performance to ALECs.

19

20   **Issue 11.   a.   What is the appropriate methodology that**

21   **should be employed to determine if BellSouth is providing**

22   **compliant performance to an individual ALEC? (Tier 1)**

23   **c.   What is the appropriate structure?**

1   **1. *What is the appropriate statistical methodology?***

2

3   **Issue 12.   a.   What is the appropriate methodology that**

4   **should be employed to determine if BellSouth is providing**

5   **compliant performance to an individual ALEC? (Tier 2)**

6   **c.   What is the appropriate structure?**

7   **1. *What is the appropriate statistical methodology?***

8

9   Q.   **WHAT STATISTICAL METHODOLOGY DO THE ALECS**

10   **RECOMMEND?**

11   A.   The ALECs recommend use of the modified z statistic.   This test

12   statistic is described in a paper attached to this testimony as Exhibit

13   RMB-1.[1] For each parity submeasurement (a disaggregated

14   measure), BellSouth's performance for its retail operation (or that of its

15   affiliates) is compared with the performance it provides to a given

16   ALEC to create a z score (the modified z statistic), which then can be

17   used to determine whether BellSouth's performance for an ALEC is in

18   parity with its performance for its retail operation. For small sample

19   sizes (30 or fewer observations in either of the data sets to be

20   compared), permutation analysis is used to compute the z score.

21   Permutation analysis is a computer-intensive method that compares

22   the observed results for the ALEC customers with the distribution of

---

[1] *See* Exhibit RMB-1, "Statistical Tests for Local Service Parity", Version 1.0, February 6, 1998, Local Competition Users Group.

1   results that would be observed if ALEC had been drawn at random

2   from the pool of ALEC and BellSouth customers (see Exhibit RMB-2,

3   "Permutation Analysis Procedural Steps").

4   Out-of-parity performance occurs when the z score falls below

5   a pre-specified critical value that depends on the two sample sizes.

6   Values of z that fall below the critical value are taken as indications of

7   discrimination. The ALECs use a principle called "balancing" to

8   determine the critical value.

9

10 Q   IS MODIFIED Z AN APPROPRIATE COMPONENT OF THE

11   STATISTICAL METHODOLOGY FOR MAKING PARITY

12   DETERMINATIONS?

13 A. Yes. Experience with BellSouth's raw data confirms that the modified

14   z statistic is an appropriate and effective component of the

15   methodology for parity determinations. In its August 31, 1998 order in

16   Docket No. U-22252-C, the Louisiana Public Service Commission

17   required BellSouth to give ALECs access to raw data that underlies

18   BellSouth's reports.[2] In that proceeding, Dr. Colin Mallows, an AT&T

19   statistician, was able to receive and work with at least some of

20   BellSouth's performance data in order to assess the performance of

21   the statistical test.[3] The ability to look at and analyze data is critical to

---

[2] Order, In re: BellSouth Telecommunications, Inc., Service Quality Performance Measurements, Docket No. U-22252, Subdocket C, August 31, 1998.
[3] Pursuant to a protective agreement, BellSouth provided some of its raw data associated with four measures it includes in its SQM. The measures for which Dr. Mallows received

1   determining the appropriate statistical test; one cannot be assured that

2   the data characteristics are properly accounted for in the statistical

3   methodology unless one can observe the data and how it behaves

4   over time. The Louisiana Public Service Commission's order provided

5   the opportunity for Dr. Mallows to actually see raw data and, thereby,

6   confirm and refine the statistical methodology. Dr. Mallows analysis of

7   the raw data confirmed that the modified z statistic is an effective

8   component of the methodology for parity determinations.

9

10   Q.   WHAT IS THE CRITICAL VALUE AND WHY IS IT IMPORTANT?

11   A.   The critical value is used, along with the modified z, to determine

12   whether the performance for a particular measure is considered to be

13   in violation. As the modified z statistic is defined in the ALEC plan,

14   negative values of modified z provide evidence than an ALEC's

15   customers are receiving worse service than the corresponding CLEC

16   customers, with large negative numbers providing the most evidence.

17   The value of the modified z statistic is compared with a pre-specified

18   negative number, called the critical value. If modified z is more

19   negative than the critical value, then the measure is determined to be

20   in violation. Otherwise, the measure is not determined to be in

21   violation, even though service for the ALEC customers may have been

22   worse than service received by the retail customers.

---

some raw data were: Order Completion Interval, Maintenance Average Duration, Missed
Repair Appointments, and Missed Installation Appointments.

1 Q. **PLEASE EXPLAIN THE CONCEPT OF "ERROR" IN CONNECTION**

2 **WITH STATISTICAL TESTING.**

3 A. Because statistical tests are based on finite amounts of data, they are

4 subject to error. For tests of parity, there is some chance that a

5 measure will be determined in violation when, in fact, the two

6 processes were in perfect parity (i.e., any difference was purely due to

7 random variation). Likewise, when the two processes are out of parity

8 such that the ALEC's customers receive systematically worse service,

9 there is a chance that the statistical test will fail to find the measure in

10 violation, again due to random variation.

11

12 Q. **WHAT IS A TYPE I ERROR?**

13 A. A Type I error occurs if the statistical test indicates that BellSouth is

14 favoring its retail operations when, in fact, parity service exists. Type I

15 errors occur because of random variation.

16

17 Q. **WHAT IS A TYPE II ERROR?**

18 A. A Type II error occurs if the statistical test fails to indicate that

19 BellSouth is favoring its retail operations when, in fact, a certain

20 degree of disparity does exist. Like Type I errors, Type II errors occur

21 because of random variation. In contrast to Type I errors,

22 determination of the probability of a Type II error requires specification

7

1   of an alternative hypothesis that quantifies the degree of service

2   disparity.

3

4 Q. HOW DOES THE CHOICE OF THE CRITICAL VALUE AFFECT

5   TYPE I AND TYPE II ERRORS?

6 A. The critical value trades off between the probabilities of Type I and

7   Type II errors. A large negative critical value holds down the

8   probability of a Type I error, but allows the probability of a Type II error

9   to grow larger. A less negative critical value keeps down the

10   probability of a Type II error but allows the probability of a Type I error

11   to grow. Put simply, a large negative critical value reduces the

12   possibility of determining noncompliance when BellSouth is in fact

13   providing parity service, while less negative values reduce the

14   possibility of determining BellSouth is compliant when in fact they are

15   providing noncompliant support.

16

17 Q. WHAT IS A BALANCING CRITICAL VALUE AND HOW IS IT

18   DETERMINED?

19 A. The balancing critical value method explicitly accounts for the

20   probabilities of both Type I and Type II errors. The basic concept is to

21   equate the probability of a Type I error (under parity) with the

22   probability of a Type II error for a specified alternative hypothesis.

23

1 Q. HOW SHOULD THE ALTERNATIVE HYPOTHESIS FOR THE

2 BALANCING METHOD BE DETERMINED?

3 A. The alternative hypothesis should describe the minimum degree of

4 disparity that constitutes a material impact on competition. The

5 balancing method recognizes that small degrees of disparity may not

6 significantly hinder competition, and thereby do not require protection

7 for the ALECs. However, the degree of disparity specified by the

8 alternative hypothesis should not exceed the minimum amount that

9 would constitute a material impact on competition because doing so

10 would deny the ALECs adequate protection against that degree of

11 discrimination.

12

13 Q. HOW IS A BALANCING CRITICAL VALUE DETERMINED?

14 A. Once the alternative hypothesis has been specified, a balancing

15 critical value (BCV) is set by equating the probabilities of Type I and

16 Type II errors. The degree of disparity can be specified in terms of a

17 parameter "delta."

18

19 **Issue 11.   a.   What is the appropriate methodology that**

20 **should be employed to determine if BellSouth is providing**

21 **compliant performance to an individual ALEC? (Tier 1)**

22   **c.   What is the appropriate structure?**

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

1   *5. Should there be a floor on the balancing critical*

2   *value?*

3

4   **Issue 12.   a.   What is the appropriate methodology that**

5   **should be employed to determine if BellSouth is providing**

6   **compliant performance to an individual ALEC? (Tier 2)**

7   **c.   What is the appropriate structure?**

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

9   ***5. Should there be a floor on the balancing critical***

10   ***value?***

11

12   Q.   **WHAT IS THE PARAMETER "DELTA" AND WHY IS IT**

13   **IMPORTANT?**

14   A.   The parameter delta defines the degree of violation of parity (i.e., the

15   alternative hypothesis) for which the probability of Type II error is

16   balanced against the probability of Type I error under parity. Delta

17   specifies the difference between the ALEC mean and the BellSouth

18   mean. To account for the fact that performance measures do not

19   share a common scale, the difference between the ALEC and

20   BellSouth means is stated as delta times the standard deviation for

21   BellSouth customers. For example, suppose that the measure Order

22   Completion Interval has a mean of 5.0 days and a standard deviation

23   of 6.0 days for BellSouth customers. Then a delta of 0.25 would yield

10

1   an alternative hypothesis that the true mean for ALEC customers is

2   6.5 days (5.0 + 0.25 x 6.0).

3

4 Q. **HAS A VALUE OF THE DELTA PARAMETER BEEN AGREED**

5   **UPON?**

6 A. No, the ALEC's and BellSouth's statisticians agree on the principle of

7   balancing Type I and Type II errors, but they have not agreed on a

8   value for the delta parameter. The balancing critical value

9   development is incomplete until the value of the delta parameter is

10   specified.

11

12 Q. **WHY HAS THE DETERMINATION OF THE DELTA PARAMETER**

13   **NOT BEEN RESOLVED?**

14 A. Resolution of this question cannot be based solely on a theoretical

15   statistical analysis. Ideally, this decision should be based on business

16   judgment, namely by determining the smallest violation of parity that is

17   "material." The parameter delta measures the size of this violation.

18   Once delta is chosen, the formula makes proper allowance for the

19   effect of the sample size. When delta is large, the balancing occurs at

20   a more extreme degree of observed disparity. BellSouth wants a

21   large delta because this means a smaller probability of Type I error

22   and hence, larger probability of Type II errors for any given degree of

23   true disparity. The ALECs want a value of delta that protects them

11

1   against any degree of disparity that would pose a material obstacle to

2   competition. If the parameter delta is set too high—such that some

3   smaller violation would present a material obstacle to competition—

4   then the balancing principle would be violated.

5

6 Q. WHAT VALUE OF DELTA DO THE ALECS PROPOSE AND WHAT

7   DOES THAT VALUE IMPLY?

8 A. The ALECs propose that this Commission adopt 0.25 or less as the

9   parameter delta value for all submeasures. To understand the

10   implications of this and various alternative values of delta, consider

11   what they imply for the counted performance measures. Consider a

12   counted measure indicating a particular service problem that is

13   triggered for 1 percent of BellSouth's own customers. Column 1 of

14   Table 1 (below) shows that the degree of disparity quantified by delta

15   equal to 0.25 implies that 5.0% of ALEC customers would encounter

16   the same problem; that is, the ALEC rate is five times the BellSouth

17   rate.[4] Subsequent rows of the same column show the problem rates

18   for ALEC customers implied by a delta of 0.25 for problems that affect

19   5, 10, or 20 percent of BellSouth customers. The ALECs judge that

20   disparities of this size pose material obstacles to competition.

21   Therefore, delta should be no more than 0.25. Any larger value of

22   delta would require even greater disparities before balancing takes

1   place. For example, for a problem that occurs for 1 percent of

2   BellSouth customers, a delta value of 0.50 would not balance until the

3   ALEC rate reached 11.8%, nearly a twelve-fold increase. These

4   disparities are highlighted in Table I.

5

6   Table 1

7   Percentage of ALEC Customers Receiving Bad Service,

8   by BellSouth Percent and Delta

	Delta		
BellSouth Percent	0.25	0.50	1.00
1.0	5.0	11.8	31.9
5.0	11.8	21.0	44.0
10.0	18.7	29.3	53.6
20.0	30.8	42.8	67.4

9

10

11   Q.   WHAT ARE THE CONSEQUENCES IF DELTA IS SET TOO

12   LARGE?

---

[4] The table assumes use of arcsin square root transformation to stabilize the variance of proportions. Using this function, transformed proportions have a nearly constant variance across the range of possible true proportions.

13

1   A.   Suppose that delta is set substantially above the minimum value that

2   represents material impact on competition for a particular measure.

3   Then the ALECs will face greater risk of a Type II error in the face of

4   disparity constituting material impact than BellSouth would face of at

5   Type I error under parity. In other words, proper balancing would not

6   occur. This problem would be magnified for large sample sizes,

7   because balancing can produce unconventionally large, negative

8   critical values. For example, with samples sizes of 2,500 and 250 for

9   BellSouth and a ALEC, respectively, a delta equal to 0.50 yields a

10   balancing critical value of -3.77, corresponding to a Type I error

11   probability of 0.00008 (i.e., 1 in 12,000), far below any conventional

12   significance level used in statistical testing. A delta equal to 1.00

13   would yield a balancing critical value of -7.54, corresponding to a

14   microscopically small Type I error probability. Consequently,

15   compelling statistical evidence of discrimination, e.g., a z score of $-$

16   6.0, might be ignored. Such an outcome would be justified only if one

17   could be certain that delta had not been set too large. If delta is set

18   too large (e.g., delta greater than 0.25), a floor value for the BCV

19   might then be needed. With a delta of 0.25 or less, as recommended

20   by the ALECs, a floor value should be unnecessary.

21

22   Q.   WHAT DO ALECS RECOMMEND THAT THIS COMMISSION

23   ORDER CONCERNING THE STATISTICAL METHODOLOGY?

14

1   A.   There are two things that should be included in the Commission's

2   order. First, ALECs propose that the Modified Z be the statistic used

3   for making parity determinations. Second, ALECs propose that this

4   Commission order the parameter delta value be set no higher than

5   0.25 for all submeasures.

6

7   Q.   **WHEN THE DELTA VALUE FOR THE BALANCING CRITICAL**

8   **VALUE IS ESTABLISHED, WILL THE ALECS BE SATISFIED THAT**

9   **THE RECOMMENDED STATISTICAL METHODOLOGY WILL**

10   **ACCURATELY EVALUATE BELLSOUTH'S PERFORMANCE?**

11   A.   Although no perfect methodology for this purpose can be created, I

12   believe that the methodology proposed by the ALECs will be fair to

13   both sides. We expect to monitor how the methodology works in

14   "production mode", when very large amounts of data are being

15   analyzed. AT&T's statistician will monitor how the methodology works

16   after implementation and will make recommendations for

17   improvements, if necessary.

18

19   Q.   **DOES THAT CONCLUDE YOUR TESTIMONY?**

20   A.   Yes.

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

2   **A.**   My name is Robert M. Bell. My business address is AT&T Labs-

3   Research, 180 Park Avenue, Florham Park, New Jersey 07932.

4

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

6   **A.**   My testimony responds to certain portions of the direct testimony of Dr.

7   Edward Mulrow and describes errors in Exhibit DAC-6 filed by Mr. David

8   Coon. The greatest part of my testimony discusses problems with an

9   example that Dr. Mulrow uses to illustrate how the parameter delta should

10   be specified.

11

12   **Q.**   **HOW SHOULD THE COMMISSION EVALUATE ALTERNATIVE**

13   **VALUES FOR THE PARAMETER DELTA REQUIRED TO SET A**

14   **BALANCING CRITICAL VALUE?**

15   **A.**   Any particular value of the parameter delta implies a specific degree of

16   departure from parity between the service received by ALEC customers

17   and BellSouth's retail customers. Deciding on the appropriateness of a

18   particular value of delta for a measure should be based on a judgment

19   about the impact that the corresponding disparity of service would have on

20   the competitive environment. Delta should define the minimum degree of

21   disparity that causes a material impact on competition. Thinking about

22   real measures is the best way to make these judgments.

23

1 Q.   **ON PAGES 18-19 OF HIS DIRECT TESTIMONY, DR. MULROW**

2   **PRESENTED AN EXAMPLE TO ILLUSTRATE THE EFFECTS OF TWO**

3   **DIFFERENT VALUES OF DELTA FOR A SPECIFIC MEASURE.**

4   **PLEASE SUMMARIZE THIS EXAMPLE?**

5 A.   Dr. Mulrow performs calculations for a measure, time to provision a

6   dispatched retail order, which he assumes has a mean of 5.0 days and

7   standard deviation of 0.5 days for BellSouth's customers. He states that a

8   delta of 1.0 implies that the minimum difference between the ALEC and

9   BellSouth means that would be material equals one-half the BellSouth

10   standard deviation (0.25 days or 6 hours). He writes that a delta of 1

11   "means that as long as the average time taken to provide the relevant

12   service to the ALECs did not exceed the BellSouth mean (5 days) plus

13   one-half of the standard deviation I mentioned (half a day), the difference

14   would not be material. That is, if the mean for the ALECs for this period

15   were 5.25 days or less, the difference would not be material." (p. 18, lines

16   15-19). This leads to the question, "Is it material that BellSouth took 6

17   hours longer over a five-day period on average to provide service to the

18   ALEC than to its own retail services?" (p. 19, lines 6-8). A corresponding

19   calculation for delta equals 0.5 led to the question "Is it material that

20   BellSouth took 3 hours longer, on average?" (p. 19, lines 8-9).

21

22

23

2

1 **Q.** **IS DR. MULROW'S EXAMPLE USEFUL?**

2 **A.** No. There are two problems with the example that result in the statement

3 of misleading questions about material impact. First, Dr. Mulrow

4 incorrectly includes a factor of one half in his calculation of the difference

5 implied by any value of delta. Second, he assumes an implausibly small

6 value for BellSouth's standard deviation for the time-to-provision measure.

7 Consequently, he understates the resulting disparity by a factor of 20 or

8 more.

9

10 **Q.** **WHAT WAS THE FIRST PROBLEM WITH THE EXAMPLE AND WHY IS**

11 **IT IMPORTANT?**

12 **A.** Dr. Mulrow argues that the parameter delta should be set so that the

13 minimum material difference equals 0.5 x delta x BellSouth's standard

14 deviation. Including the factor of one-half violates the balancing principle

15 because balancing occurs when the true difference in means equals delta

16 x BellSouth's standard deviation. The Louisiana joint statistician's report

17 implicitly defines materiality in terms of the alternative hypothesis, "If a

18 standard of materiality is set by stating a specific alternative hypothesis for

19 the test, ...then a critical value can be determined so that the two error

20 probabilities are equal." (Exhibit EJM-1, page 9 of 39). That is, a material

21 difference must be defined as delta x BellSouth's standard deviation (the

22 difference between the BellSouth mean and the ALEC mean under the

23 alternative hypothesis). If delta is set incorrectly, so that a difference of

3

1   one-half that size is material, then proper balancing does not occur. The

2   probability of a Type II error when there is a difference corresponding to

3   one-half delta remains at 50 percent, no matter how low the Type I error

4   falls.

5

6 Q. **WHAT WAS THE SECOND PROBLEM WITH THE EXAMPLE AND WHY**

7   **IS IT IMPORTANT?**

8 A. Dr. Mulrow's example assumed that BellSouth's standard deviation was

9   0.5 days—only one-tenth the average time to provision. Because

10   distributions for waiting times tend to have long tails (i.e., some customers

11   may take 30 days or more to provision), these measures would be

12   expected to have standard deviations that exceed their means. For

13   example, in a later example, Dr. Mulrow assumes that the standard

14   deviation of the interval for providing service to BellSouth's retail analog is

15   4 days, compared with a mean of only 3 days. Real data demonstrate the

16   same relationship (see "Qwest Performance Results (ROC 271 PID 2.0,"

17   December 21, 2000). Page 54 of the report shows monthly summary data

18   for the measure OP-4A, "Installation Interval (Average Days) – Dispatches

19   within MSAs" for residences. For nine of the ten reported months

20   (January to October 2000), the CLEC standard deviation exceeds the

21   CLEC mean (the report does not report standard deviations for Qwest

22   customers). The ratios of the standard deviations to the means range

4

1	from 0.91 to 1.66 with a median of 1.19. Similar results hold for
2	dispatches outside MSAs (measure OP-4B).
3	Consider the consequence of using a more realistic, but still conservative,
4	standard deviation of 5 days in Dr. Mulrow's example. In that cases, a
5	delta of 1.0 would imply a difference of 5 days between the ALEC and
6	BellSouth means—20 times larger than the 6 hours calculated by Dr.
7	Mulrow. Based on the improved calculation, delta equal to 1.0 implies that
8	as long as the average time taken to provide the relevant service to the
9	ALECs did not exceed 10 days, the difference would not be material.
10	The following table shows the correct degree of disparity associated with
11	various values of delta (assuming BellSouth's standard deviation equals 5
12	days). For example, delta = 0.50 (second row from bottom) implies a
13	difference of 2.5 days, so that balancing occurs with for an alternative
14	hypothesis that the ALEC mean equals 7.50 days. Note that the
15	disparities stated in Dr. Mulrow's testimony actually correspond to delta
16	values of 0.025 and 0.05.
17	

1   Degree of Disparity Associated with

2   Selected Values of Delta

Delta	Disparity (in days)	ALEC Mean (in days)
0.025	0.125	5.125
0.05	0.25	5.25
0.10	0.50	5.50
0.25	1.25	6.25
0.50	2.50	7.50
1.00	5.00	10.00

3   Disparity = difference in means implied

4   by Delta (Delta x 5 days)

5   ALEC Mean = ALEC Mean under alternative

6   hypothesis (BellSouth mean + Disparity)

7

8 Q.   DR. MULROW REJECTS A FLOOR FOR THE BALANCING CRITICAL

9   VALUE CONCLUDING, "BELLSOUTH WOULD BE PAYING A

10   PENALTY EVEN THOUGH THE FOUR-DAY THRESHOLD THAT

11   ACTUALLY REPRESENTS A MATERIAL DIFFERENCE HAS NOT

12   BEEN MET IN THE FOURTH SET OF OBSERVATIONS." (PP. 21-22).

13   DO YOU AGREE WITH HIS CONCLUSION?

1   **A.**   No. In the line that Dr. Mulrow cites, the balancing critical value is −12.35.

2   Consequently, unequivocal evidence of non-parity with z scores of -8, -10,

3   or even -12 would fail to trigger a remedy. This decision would only be

4   justified if we could be assured that the observed difference did not hinder

5   competition. However, setting delta is not an exact science. There is no

6   magic point at which disparities suddenly become material. Even if there

7   were, we could not identify that point with any certainty. Consequently, a

8   floor on the balancing critical value provides some protection against

9   failing to trigger a remedy in the face of unequivocal, material disparity for

10   measures with large samples, when delta has been set too high. If delta

11   is set at 0.50 or higher, this risk is clear enough that a floor on the

12   balancing critical value should be used. Although the same danger

13   theoretically exists for delta = 0.25, the value used in the joint ALEC plan,

14   the danger is sufficiently small, at current samples sizes, so that I do not

15   anticipate a floor would be necessary. Even at current sample sizes,

16   however, a delta of 0.50 or 1.00 would be problematic.

17

18   **Q.**   **DOES TRUNCATED Z PREVENT PARITY SERVICE IN SOME CELLS**

19   **FROM CONCEALING DISCRIMINATION IN OTHER CELLS?**

20   **A.**   No. The truncation step, setting $Z_j^* = \min(0, Z_j)$, is designed to keep a

21   single cell where the ALEC's customers receive much better than parity

22   service from canceling out poor service in other cells. However, it does

23   not prevent parity, or better, service in a large number of cells from

1   concealing very poor service in other cells. Suppose that BellSouth

2   provides very poor service in a few cells (e.g., modified z scores extreme

3   enough to rule out random variation as the explanation) and parity service

4   in other cells being aggregated. The more parity cells that are included

5   the greater the chance is that truncated z will not be significant. The

6   reason is that each cell that is in parity tends to increase the expected

7   value of the truncated z statistic (high values are take as evidence of

8   parity). In addition, each cell that is in parity decreases the balancing

9   critical value that truncated z must fall below to be judged significant.

10   Similarly, parity service in just a few large cells can conceal very poor

11   service in much smaller cells because the truncated z statistics weights

12   the modified z scores according to sample sizes in the cells. This feature

13   of truncated z is not a flaw in the procedure, but it can result in unintended

14   consequences if very heterogeneous cells are aggregated.

15

16   Q.   ARE THE CALCULATIONS ILLUSTRATING THE SEEM REMEDY

17   PROCEDURE, ON PAGES 4-6 OF EXHIBIT DAC-6, CORRECT?

18   A.   No. The ILEC sample sizes for cells 1-10, which are not provided, would

19   be required to validate exactly the modified z, truncated z and balancing

20   critical values. However, there is enough information available to prove

21   that the balancing critical values shown in the tables are wrong by as

22   much as a factor of 70. The tables all report balancing critical values of –

23   0.21. However, for Order Completion Interval (p. 5), if the total ILEC

BY MR. PRESCOTT:

Q   Doctor Bell, attached to your prefiled direct

testimony, were there two exhibits labeled RMB-1 and RMB-2?

A   Yes, there were.

Q   Did you have any exhibits attached to your rebuttal

testimony?

A   No.

Q   Have you prepared a summary of your testimony?

A   Yes, I have.

Q   Would you provide the Commission with a summary of your

testimony?

A   Yes. Good morning, Mr. Chairman and Commissioners. I

am going to summarize the testimony that I provided on

statistical components of the joint ALEC and BellSouth plans. I

will do my best to use plain English. But if I get too

technical, please interrupt me for clarification.

The statistical tests used to determine compliance

require decisions about several steps in the procedure.

Fortunately, both sides agree on several decisions, use of

modified z in large samples and permutation analysis for small

samples, as well as use of the balancing critical value

methodology.

I will focus this morning on the two most important

areas of disagreement, aggregation and the value for delta which

is used to set balancing critical values. I'm not here to tell

1   the Commission what to do, but instead to provide guidance on how

2   to evaluate both side's proposals on these two crucial decisions.

3   Both plans disaggregate in order to produce

4   like-to-like comparisons. Unlike the JALEC plan, BellSouth uses

5   a method called truncated z to combine large numbers of cells

6   into a single z score that is compared against a balancing

7   critical value. I support use of truncated z as a method for

8   aggregation of homogeneous groups of cells. However, aggregation

9   methods, including truncated z, should not be used to aggregate

10   heterogeneous cells. For example, for services that involve

11   distinct delivery processes.

12   The reason is that aggregation using truncated z can

13   mask discrimination that would be unequivocal in the absence of

14   aggregation resulting in no remedy payment being used when

15   aggregation is used. No remedy payment being made when

16   aggregation is used. Doctor Ford's rebuttal testimony provided a

17   good example of how severe discrimination for xDSL service might

18   be masked by aggregation with POTS service.

19   Let me turn to setting the parameter delta. Balancing

20   equates two types of errors, what we call Type I error, deciding

21   that BellSouth has discriminated when, in fact, it is providing

22   parity service. And Type II error, deciding that BellSouth

23   provides parity service when, in fact, there is a systematic

24   disparity of a certain size.

25   The parameter delta is used to specify the size of that

1 disparity for which the Type II error is being balanced. This

2 disparity should equal the minimum difference that is judged to

3 be a material obstacle to competition.

4 Now, the last two days you have heard a lot about delta

5 in abstract terms. Despite that, you do not need to just pick a

6 value of delta out of thin air. In my testimony I have

7 consistently stated that the best way to evaluate alternative

8 values of delta is to look at what they imply for specific

9 measures. I presented the table that is on the easel to my right

10 as Table 1 in my direct testimony to help put the meaning of

11 delta into real terms.

12 Consider the highlighted row, which would apply to any

13 measure where BellSouth's proportion is .05, or about five

14 percent. To give the row some meaning, suppose that it refers to

15 missed installation appointments. In other words, BellSouth for

16 its own customers misses five percent of installation

17 appointments. The last three columns of the table show the ALEC

18 percentage under the alternative hypothesis that is applied by

19 delta values of .25, .5, and 1.0. For example, a delta of .25

20 implies that Type I errors would be balanced against Type II

21 errors when the ALEC percentage is 11.8 percent, more than double

22 the rate of misses for BellSouth customers.

23 If you judge that this size of a disparity is material,

24 then delta should be set no larger than .25 for this particular

25 measure, and perhaps it should be lower.

1   A value of delta equal to .50 would be justified only

2   if you judge that an ALEC value of 20 percent, that is a

3   four-fold increase in the rate of missed appointments is

4   immaterial. The reason I say 20 percent is that a value of .50

5   for delta implies balancing at a value of 21 percent. So that we

6   are saying that a value of 20 percent is not material.

7   A delta equal to 1 would be justified only if the

8   minimum material disparity was about a nine-fold increase. I

9   urge you to also review the table that I present in my rebuttal

10   testimony with a similar example for a mean measure, specifically

11   the time to provision a dispatched residential order. Review of

12   examples like these is the basis for the JALEC recommendation

13   that delta be set no higher than .25. Thank you.

14   MR. PRESCOTT: The witness is available for questions.

15   Any cross? ALECs?

16   MR. McGLOTHLIN: I have a few questions relating to the

17   differences in approach taken by Doctor Bell and Doctor Ford.

18   And for a point of reference, I just want to put up another

19   poster on the easel.

20   CROSS EXAMINATION

21   BY MR. McGLOTHLIN:

22   Q   Doctor Bell, in your prefiled testimony and in your

23   summary you alluded to the balancing critical value methodology.

24   Is it fair to state that both you and Doctor Ford are both

25   concerned with the impact of high values of BCV, or balancing

1   critical value, on the significance level of the statistical

2   test?

3   A   Yes, I am.

4   Q   Now, is it true that the value of balancing critical

5   value, the numerical result, is a function of the choice of

6   delta?

7   A   Yes.

8   Q   And the higher the delta value, the higher the

9   balancing critical value, correct?

10   A   That is correct.

11   Q   And the higher the balancing critical value, the

12   greater the impact on the significance level of the test?

13   A   Could you restate that last --

14   Q   The higher the BCV, the greater the impact on the

15   significance level of the test?

16   A   Well, the higher the balancing critical value, the

17   lower would be the Type I error, which is also often known as the

18   significance level.

19   Q   And what is the import of that? What do you mean by a

20   lower significance level, or lower Type I rate, why does that

21   matter?

22   A   A Type I error occurs if BellSouth is providing parity

23   service and the test judges they are not providing parity

24   service.

25   Q   All right. Now, balancing critical value also is a

1   function of ALEC sample size, is that correct?

2   A   Yes.

3   Q   And the larger the sample size, the larger the

4   balancing critical value?

5   A   Yes.

6   Q   And, again, the lower the significance level or error

7   rate, correct?

8   A   That is correct.

9   Q   I want to take just a moment and perhaps ask you why

10   that is the case. We have behind you the formula for the

11   calculation of the Mod z test. And at a very conceptual level,

12   do I understand it correctly that the z score is calculated by

13   first measuring the difference of the means, which are the two X

14   values in the numerator, you find the difference in the means

15   between the ILEC and the ALEC, and then you divide by a function

16   which is a calculation of standard deviation, correct?

17   A   Yes.

18   MR. LACKEY: Just a moment. Before he answers that

19   question, I want to object to this line of cross. I know it may

20   be difficult to tell, but this is friendly cross. Mr.

21   McGlothlin's witness has testified in deposition which has been

22   admitted to this record that the only point they disagree on is

23   the selection of delta. And now we have gone the discussion of

24   delta, which is where Mr. McGlothlin started, and off on a

25   different tangent. And as I said, this is nothing but friendly

1 cross, I object to it going on any further.

2   MR. McGLOTHLIN: Well, counsel is mistaken. The

3 difference between the two witnesses is that Doctor Ford proposes

4 to have delta vary with sample size, whereas Doctor Bell does

5 not. And we are at issue on that aspect of the choice of delta.

6 And this is simply a quick background to ask Doctor Bell some

7 questions about that difference.

8   CHAIRMAN JACOBS: It has been represented then that you

9 are simply qualifying your line of questioning by this --

10   MR. McGLOTHLIN: That is correct.

11   CHAIRMAN JACOBS: And you are not really -- proceed

12 with your questions.

13   MR. LACKEY: As long as he is talking about delta,

14 that's fine, I just couldn't see it.

15   CHAIRMAN JACOBS: You guys are getting me way out there

16 trying to rule on this kind of an objection. Go ahead.

17 BY MR. McGLOTHLIN:

18   Q   Is it true, Doctor Bell, that in calculating the z

19 score one divides the difference of the means by a value which is

20 a function of ALEC sample size?

21   A   Yes.

22   Q   Now, standard deviation measures the extent to which

23 data vary from and around the mean, is that correct?

24   A   Yes.

25   Q   Now, is it true that if you have a larger population,

1   as the size of the population increases, the extent of

2   variability away from the mean decreases?

3   A   If you are talking about the measure itself, no. The

4   standard deviation for the population, which is -- or the

5   standard deviation for the sample, which is S sub B in that

6   formula, does not change. What would change is the standard

7   deviation of a sample mean, which is often referred to as a

8   standard error.

9   Q   All right. So as the standard deviation decreases with

10   population, standard deviation of the mean -- that as the

11   population increases, the standard deviation of the mean would

12   decrease, correct?

13   A   As the size of the sample -- as the size of the ALEC or

14   ILEC sample increases, yes.

15   Q   In simpler terms, do I understand correctly that as you

16   increase sample size of the ALEC, you tend to decrease the size

17   of the denominator in the ratio that is used to calculate the z

18   score?

19   A   Yes.

20   Q   All right. So that is why as sample size increases,

21   the balancing critical value increases because balancing critical

22   value is a form of a z score?

23   A   I wouldn't say that it is a form of a z score. The

24   balancing critical value is increasing in some sense at an

25   inverse rate with that denominator. In fact, it has the same

1 functional form. There is a piece of the balancing critical

2 value that looks exactly like the formula that is there in the

3 square root. And, in fact, it is also in the denominator at the

4 balancing critical value.

5   Q   So we have identified two factors that -- each of which

6 independently tends to increase balancing critical value, right,

7 and delta is one of those and sample size is the other?

8   A   Yes.

9   Q   Now, you have chosen -- you propose a delta of .25,

10 have you not, sir?

11   A   Yes.

12   Q   And would it be fair to conclude that one reason for

13 that choice is to restrain the impact of the choice of delta on

14 the resulting balancing critical value?

15   A   I would say no to that. The reason that the JALECs

16 propose a value of .25 or less is tied to the issue of

17 materiality and how large of a difference between the JALEC mean

18 and the -- between the ALEC mean and the BellSouth mean would be

19 judged to be a material impact on competition.

20   Q   All right. I thank you for that correction on your

21 part. But would it be fair to say that the effect of that choice

22 would have some limiting effect on the size of balancing critical

23 value relative to a larger delta choice?

24   A   Yes.

25   Q   You have not chosen to build into the statistical

1   analysis any adjustment for sample size, is that correct?

2   A   That is correct.

3   Q   Would you agree that even --

4   A   Excuse me. You mean in the specification of delta?

5   Q   That is correct.

6   A   That is correct.

7   Q   Would you agree that even with a delta of .25 relative

8   to larger ones, the resulting balancing critical value can reach

9   very large values with sample sizes that one would expect to

10   encounter in operation?

11   A   Well, I don't -- I haven't seen the sample sizes that

12   are, in fact, existing, so I can't say that the balancing

13   critical values get large for the sample size that might occur.

14   But there certainly are sample sizes that would lead to very

15   large balancing critical values.

16   Q   All right. While you have not individually proposed to

17   vary delta as sample size, do you think it would be appropriate

18   to incorporate some adjustment mechanism to vary delta with

19   sample size so that the balancing critical values do not become

20   extremely large?

21   A   As I stated in my direct testimony and perhaps the

22   rebuttal, and also in deposition, I am concerned about what can

23   happen, first of all, if a value of delta is chosen that really

24   is too large. In the example that I had up there, if a value --

25   if the appropriate value of delta to calibrate materiality is

1   .25, but a value is chosen that was .5 or 1, I'm concerned about

2   the impact that has in terms of Type II errors where the

3   probability of not finding discrimination is too large. And that

4   problem is -- that problem is particularly evident at large

5   sample sizes where you could have a situation where there is very

6   strong evidence that parity is not existing, but the test itself

7   still does not find BellSouth out of compliance. So, I stated I

8   am concerned about that.

9   The JALEC plan does not call for the use of either a

10   floor on the balancing critical value or changing the balancing

11   critical value as a function of delta because the JALECs did not

12   feel that the concern about a value of delta being too large was

13   enough at the particular sample sizes that were likely in order

14   for that to become an issue. However, there certainly could be

15   situations in the future where there are larger sample sizes, or

16   if there was a larger value of delta chosen for some reason, I

17   can definitely see merits in either the floor or changing delta

18   as a function of sample size.

19   MR. McGLOTHLIN: Those are all my questions.

20   CHAIRMAN JACOBS: Very well. Mr. Lackey.

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

22   CROSS EXAMINATION

23   BY MR. LACKEY:

24   Q   Doctor Bell, my name is Doug Lackey.

25   A   Good morning.

1   Q   I am an attorney representing BellSouth. I understand

2   that you have a Ph.D in statistics and are actually working on a

3   day-to-day basis as a statistician, is that correct?

4   A   Yes, that is correct.

5   Q   And I want to ask you a little bit now about what

6   documents you are familiar with in this case. Are you familiar

7   with the Louisiana statisticians report attached to Doctor

8   Mulrow's testimony as his Exhibit 1?

9   A   Yes. I am familiar with it, yes.

10   Q   When is the last time you read it?

11   A   I can't say that I have ever read it from cover to

12   cover. I reviewed pieces of it last week in preparation for my

13   deposition, although what I believe I did was I looked

14   specifically more at places that I maybe had not read previously.

15   Q   And have you reviewed Mr. Coon's testimony and the

16   exhibits attached to his testimony to see how BellSouth's

17   enforcement plan is going to work as proposed in this case?

18   A   I reviewed a fraction of his testimony. What I tried

19   to do is review pieces that were related to the statistical

20   testing aspects. I did not review pieces related to the

21   measures. And I reviewed just some of what was related to the

22   remedy payments.

23   Q   But you have reviewed that part that has allowed you to

24   understand how BellSouth intends to use statistics in the

25   application of its plan, is that correct?

1   A   I believe so.

2   Q   Okay. Now, if the Commission in this case approves a

3 plan that allows a reasonable and appropriate level of

4 aggregation, the use of the truncated z as BellSouth has proposed

5 is appropriate, correct?

6   A   Yes. If the aggregation is appropriate, then I believe

7 the truncated z is the method that should be used.

8   Q   And just so we are clear on that, one of the

9 differences we are talking about in this proceeding is that the

10 ALEC plan has no aggregation in it and the BellSouth plan has

11 aggregation in it, is that correct?

12   A   Yes.

13   Q   Now, it is correct that the truncated z statistic was

14 developed jointly by an AT&T statistician whose name is, I think,

15 is it Colin Met (phonetic)?

16   A   It is Doctor Colin Mallows.

17   Q   Mallows. And he was the senior statistician in your

18 organization, is that correct?

19   A   Well, he is certainly a distinguished statistician that

20 I worked with until last fall.

21   Q   Okay. And so the notion of the truncated z test

22 statistic is not something that BellSouth just dreamed up, right?

23   A   No, it's not.

24   Q   It's something that statisticians can accept as being

25 an applicable aggregate level test statistic, correct?

1   A   Yes.

2   Q   Now, let's talk about the aggregations in this case.

3 It is my understanding that it is your position that the question

4 of whether an aggregation is appropriate or not is a business

5 judgment, correct?

6   A   Well, I believe it requires both business knowledge as

7 well as knowledge about the aggregation method so that one can

8 know how the method was -- when use of the method is appropriate

9 and when it is inappropriate.

10   Q   Do you have your deposition with you that you gave last

11 week?

12   A   Yes, I do.

13   Q   Okay. Would you turn to Page 28 of that deposition,

14 please. Let me know when you get there.

15   A   I am on Page 28.

16   Q   Okay. I'm going to read you the question on Line 9,

17 would you tell me what your answer was.

18   "Question: Now in a particular instance, the decision

19 as to whether aggregation is proper or improper, is that a

20 judgment that statisticians would make or is that a business

21 judgment?"

22   What was your answer?

23   A   I said I think that is a business judgment.

24   Q   Now, in fact, in this case you personally have no

25 opinion as to whether any proposed aggregation is proper or

1   improper, is that correct?

2   A   That is correct.

3   Q   Now, let's talk about delta for a moment. You will

4   agree that setting delta is not an exact science, correct?

5   A   Yes.

6   Q   And you will agree that there is no magic point at

7   which disparities suddenly become material, correct?

8   A   Yes.

9   Q   And you will agree that ideally the decision about what

10   the level of delta should be should also be a business judgment,

11   correct?

12   A   Yes.

13   Q   Okay. Now, were you here yesterday when Doctor Mulrow

14   testified?

15   A   Yes, I was.

16   Q   And were you here specifically during my redirect of

17   him at the end of his testimony?

18   A   I believe so. I don't recall what --

19   Q   Do you recall that I asked him whether BellSouth would

20   start paying penalties when the observed difference between the

21   means reached one-half delta?

22   A   I believe I recall that.

23   Q   And do you recall that his answer was yes?

24   A   Yes.

25   Q   Do you disagree with that response?

1   A   No.

2   Q   So just so we are clear and everybody understands that

3   whatever delta is selected here, as soon as the observed

4   disparity reaches one-half delta, BellSouth is going to start

5   paying penalties, correct?

6   A   As soon as the observed difference reaches one-half

7   delta. I think the more relevant issue is -- has to do with the

8   actual disparity that would be observed if there was no sampling

9   error. And the idea of balancing is that we are trying to

10   determine -- in picking delta we are trying to determine a delta

11   that defines a material difference, and we are trying to balance

12   the Type I and Type II errors.

13   In other words, at that material difference which is

14   specified by delta, we would like for the probability of finding

15   BellSouth in compliance to be the same as the probability of

16   finding BellSouth out of compliance if, in fact, they were

17   providing parity.

18   And the problem about talking about delta over 2 is

19   that although remedies begin when the observed difference is the

20   same as delta over 2, balancing does not occur at that point.

21   Instead of the Type I and Type II errors being the same at delta

22   over 2, the Type II error is approximately one-half, so there is

23   as good a chance if the true -- if the true difference is at that

24   value of delta over 2, there is as good a chance of not finding

25   anything as finding anything. So we don't want to set what the

1 Commission determines to be a material difference at delta over

2 2, instead we want to set it at delta.

3   Q   Well, thank you for that, but the answer to my question

4 was yes?

5   A   Yes.

6   Q   Thank you. Now, we have agreed -- I mean, the

7 BellSouth statisticians and the ALEC statisticians agree that the

8 principle of balancing, critical value balancing should be

9 applied, right, in this case?

10   A   Yes.

11   Q   And that is in opposition to something called the fixed

12 critical value approach, is that correct?

13   A   Yes.

14   Q   And what this means is is that the balancing critical

15 value can float, it can change with sample size and that sort of

16 thing, correct?

17   A   Yes.

18   Q   But with the fixed critical value, you just pick a

19 number like minus 1.64, and any observed or any calculated

20 statistics that is smaller than that or greater than that -- I

21 get confused about my minus signs -- is a violation, right?

22   A   Yes. More extreme is the way I like to put it. That

23 way you don't have to worry about whether it is plus 1.6 or minus

24 1.6.

25   Q   Just so we are clear, what I was trying to say is if

1   the fixed critical value is minus 1.64, a violation would occur

2   at minus 2?

3   A   Correct.

4   Q   It moves away from zero, correct?

5   A   Yes.

6   Q   Now, one of the problems with a fixed critical value is

7   that in large sample sizes a fixed critical value might tend to

8   trigger remedies associated with very small actual differences,

9   correct?

10   A   That's correct. That is one of two problems with it,

11 the other being at small sample sizes.

12   Q   Okay. Now, at least one of the parties in this

13 proceeding has recommended a floor on the balancing critical

14 values, correct?

15   A   Yes.

16   Q   And what that means is that instead of letting the

17 balancing critical value float according to sample size, that

18 when you get to a specific level, say minus 3, continuing my

19 example, that the critical balancing value would become fixed and

20 would not change anymore, is that correct?

21   A   That is correct.

22   Q   So in that case if a floor is implemented, basically

23 the critical balancing value becomes a fixed critical value,

24 correct?

25   A   I mean, that is sort of semantics as to whether to call

1   it a fixed critical value. I think that would be a confusing

2   term.

3   Q   Well, it's the same thing. I mean, it's minus 3 and it

4   doesn't change anymore. That's what I define as fixed.

5   A   Well, I mean, I guess if one was a little bit more

6   explicit to say it is fixed for sample sizes beyond some limit.

7   Q   Okay. Now, let's talk about that chart we have been

8   looking at for a day and a half now. It has disappeared. Can I

9   get it put back up there. This is your chart, right?

10   A   Yes, it is. It's out of my direct testimony.

11   Q   Now, I'm probably going to get this wrong, so you may

12   have to help me. But there has got to be at least three

13   different kinds of measures, a means difference, a proportional

14   test measure, and a rates measure, is that right?

15   A   Yes.

16   Q   Okay. And the means measure simply measures the

17   difference between the ALEC mean and the ILEC mean, right?

18   A   Well, that is a piece of it.

19   Q   That is what is implicated in a means measure, right?

20   A   Yes.

21   Q   You are measuring the difference between two averages?

22   A   That is correct.

23   Q   Okay. And then a proportional measure is one where

24   like you have on the board, something is 5 percent of something

25   else, or something is 30 percent of something else, correct?

1   A   Correct.

2   Q   And then the rates test, an example would be the number

3 of trouble reports per central office would be a rates measure,

4 something like that?

5   A   I don't think it would be per central office, but maybe

6 it would be, I don't know. It would be the number of trouble

7 reports per something.

8   Q   Like number of trouble reports per hundred or something

9 like that, hundred access lines?

10   A   Yes.

11   Q   Now, you will agree with me, won't you, that what you

12 have got on that chart is a -- involves a proportion measure,

13 correct?

14   A   That is correct.

15   Q   Now, isn't it true that in BellSouth's application of

16 statistical techniques and methods to its enforcement plan that

17 it did not use delta in connection with its proportion measures?

18   A   That is correct.

19   Q   So what you have got up there on that chart that is

20 labelled -- that has BellSouth's name on it and delta on it does

21 not represent what BellSouth is proposing in this proceeding,

22 does it?

23   A   It does not represent what they are proposing for

24 proportion measures.

25   MR. LACKEY: That's all I have. Thank you, Mr.

1   Chairman.

2   CHAIRMAN JACOBS: Staff.

3   CROSS EXAMINATION

4   BY MR. FUDGE:

5   Q   Good morning, Doctor Bell.

6   A   Good morning.

7   Q   Do you have an opinion as to the appropriate criteria

8   for determining the appropriate level of disaggregation?

9   A   Yes, I do. The truncated z was developed as a means

10   for summarizing results from a number of different cells, or

11   submeasures, whatever you want to call them, where there is an

12   expectation that what is being measured in each of the cells is

13   fairly homogeneous. Not necessarily perfectly homogeneous. And

14   what I mean when I say what is being measured is the degree of

15   disparity.

16   It's not a good way to look at a situation where in

17   some cells there may well be -- you would expect that there might

18   be large discrimination in other cells, there might be no

19   discrimination or discrimination in the opposite direction. So

20   that my criteria would be that one would want to aggregate

21   together cells where there was a reasonable expectation that the

22   degree of disparity was relatively constant in all of the cells,

23   and that would suggest to me that one would not want to aggregate

24   cells that had different processes, so to speak, where the

25   service provision was being given in different ways or perhaps by

1   different types of personnel.

2   Q   Would you agree that the transformed data method also

3   known as the arc sign transformation is the one statistical

4   technique that is appropriate for proportion and rate measures,

5   and for which there is evidence in this proceeding to implement

6   this technique?

7   A   Could you repeat that question one more time?

8   Q   Sure. Would you agree that the transformed data

9   method, also known as the arc sign transformation, is the one

10   statistical technique which is appropriate for proportion and

11   rate measures and for which there is ample evidence in this

12   proceeding to implement?

13   A   I agree that it is an appropriate method and that there

14   is ample evidence in the record. It is not necessarily the only

15   such method.

16   Q   What are the other methods?

17   A   BellSouth has put forward a method based on the odds

18   ratio, which at least theoretically also could be an appropriate

19   method.

20   Q   Does that method also require the setting of a

21   parameter psi?

22   A   Yes, it does require the setting of a new parameter

23   psi, yes.

24   Q   Do you have any recommended value for psi?

25   A   I do not. And to my knowledge the JALECs have not

1   proposed a value because that is not part of our plan.

2   Q   Is it true that no witness has prefiled testimony on

3   the issue of how to set the value of psi?

4   A   My understanding is that -- I am not aware of anything

5   in the BellSouth plan that does present a value.

6   Q   Would you agree that for small sample sizes compliance

7   for measures with retail analogs should be determined using a

8   permutation test for mean measures and the hypergeometric test,

9   also known as Fisher's Exact Test, for proportionate rate

10 measures?

11   A   I agree that a permutation test should be done for mean

12 measures, and that the hypergeometric, which is a form of

13 permutation test, should be done for proportion measures. For

14 ratio measures, I don't know if the hypergeometric would apply,

15 but there would be a form of permutation test that could be used.

16   Q   Would you agree that for small sample sizes compliance

17 for measures with benchmarks should be determined using the

18 adjustment table for a 95 percent confidence interval?

19   A   I don't believe so. My understanding is, but I'm not

20 certain about this, is that the benchmarks were set at a level

21 that allowed for a certain amount of variation below the ideal

22 level. And this is evidenced by the fact that the BellSouth plan

23 does not call for the use of statistical methods for sample sizes

24 in excess of 30. That is my understanding is that they do not

25 call for statistical methods for sample sizes above 30.

1   So under this understanding, I don't believe there is a

2 need for statistical methods for sample sizes under 30, although

3 I do agree with the chart that is in the JALEC plan for allowing

4 for essentially rounding up of the number of successes.

5   Q   Would you agree that for purposes of a performance

6 enforcement plan balancing Type I and Type II errors is more

7 critical with small sample sizes than with larger sizes?

8   A   Well, I think to some extent for reasons that I was

9 talking about before, that there are issues that arise at large

10 samples that mean that balancing has some -- has some limitations

11 at large samples that doesn't arise in small samples. So, the

12 answer is yes.

13   Q   In BellSouth's proposed penalty payment mechanism, do

14 you agree that the penalty is based on some estimate of the

15 number of discriminatory transactions?

16   A   No, I don't.

17   Q   All right. Does BellSouth propose to estimate the

18 total number of transactions that did not receive parity service

19 or only the portion of transactions for which disparate service

20 was detected?

21   A   I know you have read this about four times already, but

22 can you do it one more time for me.

23   Q   Sure. Would you agree that BellSouth's plan only

24 proposes to estimate the number of discriminatory transactions

25 while only looking at the portion of transactions for which

1   disparate service was detected?

2   A   What their plan does, I think, certainly does not

3   provide a measure of the number of transactions that are above

4   the number of failures, let me say that are above and beyond

5   parity. I also don't really think it gives a measure of the

6   number that are in excess of compliance, but in some sense it

7   comes closer to that in the follow sense, that if there is --

8   suppose that we are looking at something like missed

9   installations, and the BellSouth percentage is five percent. And

10   let's suppose that however one gets to that, that the decision

11   that they are out of compliance begins at ten percent. So that

12   if for any particular sample we observe 6, 7, 8, or 9 percent in

13   the ALEC sample, that would be judged to be in compliance, but if

14   we observed something in excess of 10 percent it would be judged

15   to be out of compliance.

16   Let's suppose that we observed a number that was just

17   bigger than 10 percent, like 10.1 percent. The way they compute

18   the parity gap and the affected volume, that affected volume

19   would be very, very small. And as the proportion of ALEC

20   failures gets closer and closure to 10 percent, the affected

21   volume gets closer and closer to zero.

22   What that says to me is that what the affected volume

23   is measuring is not how big the excess is of ALEC failures to

24   BellSouth failures, which in this case would be five percent of

25   cases, but it is saying something about how much above the cutoff

1 for BellSouth being found in compliance are they. So that if

2 that is what your question was asking, the latter part of your

3 question was asking about, I think it's closer to that, but even

4 so I don't think it really is a measure of that.

5 CHAIRMAN JACOBS: Is there is anyway to refine that?

6 Because it sounds like what you have to do is figure out either a

7 better benchmark or a better sensitivity analysis, I guess.

8 THE WITNESS: Well, I think that what is purported to

9 be affected volume is not affected volume. And that in my

10 particular example that if one really wanted an affected volume

11 it would be something that subtracted the number of BellSouth

12 failure rate from the ALEC failure rate. But I'm not sure that

13 that would really lead to a coherent remedy payment, because one

14 would need to be sure that that was jibing with the transaction

15 amounts that are used to multiply the affected volume. And I

16 don't understand the justification for those at all, so it's not

17 clear to me how to fix the problem that I see with the affected

18 volume calculation.

19 BY MR. FUDGE:

20 Q   Are you familiar with Mr. Coon's Exhibit 6 where he

21 provides calculations for various Tier-1 remedies?

22 A   Yes.

23 Q   So are you saying that you do not know how the

24 calculations need to be changed to estimate the total number of

25 transactions that did not receive parity service?

1   A   Could you restate the question again.

2   Q   Sure. You stated earlier that you didn't -- to

3 Chairman Jacob's question that you didn't know how to fix the

4 problems with calculating disparate service whenever they are

5 based on just those where disparate service is detected, and

6 Mr. Coon's example shows the calculation of Tier-1 remedies for

7 various disparate service, but only calculates penalties on a

8 proportion of those disparate service. So do you know how those

9 calculations could be fixed to reflect the total number of

10 transactions that did not receive parity service?

11   MR. PRESCOTT: Mr. Chairman, if I might interpose at

12 this point. I think Mr. Coon testified yesterday that the

13 numbers in here in this calculation or this example were for

14 illustration purposes only and were not accurate numbers. So I

15 don't know that there is any way that Doctor Bell would be able

16 to calculate to figure out what is wrong with this particular

17 problem.

18   MR. FUDGE: I'm just talking about the formulas.

19   MR. PRESCOTT: Okay. As long as he is not being asked

20 to fix this.

21   MR. FUDGE: Not fix the table, but fix how the table is

22 calculated.

23   CHAIRMAN JACOBS: Conceptually. Okay. Doctor Bell.

24   THE WITNESS: No, I don't. Because this is -- I don't

25 know that there really is a right answer for what the affected

1 volume should be without understanding the entire calculation,

2 which includes the factor for -- the per unit factor. In the

3 first table there is $100 per unit, and the real question is what

4 is that unit and what should it be.

5 CHAIRMAN JACOBS: One of the things -- I'm trying to

6 remember which testimony it was, and it may be totally out of

7 context, but if I recall I believe it was Ms. Marsh's testimony

8 that said at this point you begin to apply some factors, and one

9 of the factors is how long these volumes have been affected and

10 how critical they are to development of competition. Is there a

11 way to get that into this? And this is purely hypothetical, and

12 I don't even know if it works into the formula at this point.

13 But if we come to a point such as this and we are trying figure

14 out -- it sounds like what we are trying to figure out is, okay,

15 we know that there is some disparity, it sounds like.

16 THE WITNESS: Yes.

17 CHAIRMAN JACOBS: And now we are trying to figure out

18 whether or not that disparity is significant enough to want to

19 pay attention to it in some way, form, or fashion. And what I

20 understood the rationale would be is then what you want to do is

21 figure out to what extent it -- it has been happening with some

22 level of frequency.

23 THE WITNESS: Yes.

24 CHAIRMAN JACOBS: And to what extent it disrupts the

25 emerging competition. That is a very fungible, tangible kind of

1   a thing, but this seems more esoteric. Is it possible to do some

2   level of blending here to have that reflected in the result that

3   we achieve?

4   THE WITNESS: Well, I mean, it certainly might be

5   possible. What I'm saying is that I don't understand the

6   rationale of their calculation which they call affected volume,

7   which seems to me to not in any sense be a real attempt to define

8   a number of cases that were in violation. I don't understand the

9   rationale of that and how they came to these numbers like $100

10   per unit. And so to try to compute something that I would think

11   could rationally be called an affected volume and then tie it to

12   their dollar amounts doesn't seem like it would necessarily fix

13   the problem.

14   CHAIRMAN JACOBS: I see.

15   BY MR. FUDGE:

16   Q   Would you look at Step 4 of the calculations on

17   Mr. Coon's exhibit.

18   A   Yes.

19   Q   Beginning with that step, could you explain whether any

20   changes to that step would need to be made to have the affected

21   volume more accurately reflect the level of disparate service?

22   A   Yes. What this piece of the step computes is something

23   called a parity gap. And the parity gap is equal to the

24   difference between the observed truncated z score and the

25   balancing critical value. So, for instance, let's say that the

1   balancing critical value was 2 -- was minus 2, and that the

2   truncated z score was for simplicity minus 3. What this does is

3   it computes the difference between those two numbers, which is a

4   value of 1, and then in a later step, Step 5 will multiply that

5   by .25. But let's focus in on that difference of 1. It is

6   looking at the difference between the balancing critical value

7   and the truncated z.

8   I gave an analogy in the deposition where I said

9   suppose that there was a highway where the speed limit was 65

10 miles per hour and the highway patrol patrols this highway, but

11 they have a policy of not stopping anybody unless they are going

12 at least ten miles an hour over the speed limit, so unless they

13 are going at least 75 miles per hour. And let's suppose that I

14 make the mistake of going along on this highway at 77 miles per

15 hour and they pull me over. And it turns out that the fine is

16 based upon how fast I was going.

17   I think it is very unlikely that what they would do is

18 say, well, if you had been going two miles an hour slower we

19 wouldn't have stopped you, so we are going to base your fine on

20 two miles per hour and say multiply that by $10 and fine you $20.

21 Instead, I think they would say you were going 12 miles over the

22 speed limit, so you are going to pay 12 times $10, $120.

23   Well, this parity gap calculation to my mind is like

24 saying, well, they were only out of compliance by two miles per

25 hour, that's all they have -- that is all they have to pay for.

1   A more reasonable calculation to me would say how much out of

2   parity -- now that we have determined that you are out of

3   compliance, how far from parity are you. And that would be

4   something that would be based on the difference between what was

5   observed and parity. In other words, something that would look

6   at the z score directly. And that, in fact, is what the JALEC

7   plan does. It looks at the z score and standardizes it by

8   dividing it by the balancing critical value.

9   Q   So what would be the parity gap for the example you

10   just gave?

11   A   In the example I gave the parity gap is 1.

12   Q   But what do you think it should be?

13   A   I wouldn't go through a calculation based on a parity

14   gap. The analogous number I think that should be used instead of

15   1, I believe is 3, because in standardized units that is the

16   difference between parity and what was observed. I mean, if you

17   are talking about a parity gap, I would assume that should mean a

18   difference between what was observed and parity, and that would

19   be a difference of 3 as opposed to a difference of 1.

20   Q   Following along with your example with the parity gap

21   at 3, would Step Number 5 be appropriate?

22   A   Well, it would seem more appropriate at that point.

23   But, again, it is part of a whole system, and the rationale -- I

24   have never seen a rationale for the slope of .25, and exactly how

25   to determine -- the Step 5 is computing the volume proportion.

1 How to determine that volume proportion is hard to say.

2   Q   Well, would you agree with your adjustment to Step

3 Number 4 and the parity gap of 3, that the remainder of the

4 calculation would be appropriate? More appropriate?

5   A   Well, I mean, I think my testimony on Step Number 5 was

6 that it didn't necessarily make sense to me, so I'm not sure

7 whether it would make sense to continue.

8   COMMISSIONER DEASON: Let me ask a question. I'm

9 looking at the exhibit attached to Mr. Coon's testimony, DAC-6.

10   THE WITNESS: Yes.

11   COMMISSIONER DEASON: Page 4. Do you have that?

12   THE WITNESS: Yes.

13   COMMISSIONER DEASON: I'm trying to understand, are you

14 indicating that the procedure he follows in calculating the

15 parity gap and then dividing that by four is not appropriate and

16 that there should simply be a penalty applied for every instance

17 in which there is a violation, which I think is captured in the

18 column entitled I sub C?

19   THE WITNESS: I'm not testifying as to what I think an

20 appropriate calculation would be to lead to a transaction-based

21 remedy. My testimony is really about a problem I see in terms of

22 doing a calculation which, in essence, seems to be saying let's

23 pay remedies on the amount above and beyond the limit where we

24 were found out of compliance as opposed to above and beyond

25 parity.

1   COMMISSIONER DEASON: See, I guess I understand -- and

2 correct me if I'm wrong, because I may very well be, but I

3 understand that the reason for this particular exercise by

4 Mr. Coon is to try to come up with an appropriate remedy amount

5 given that in this example BellSouth itself is missing 9 percent

6 of the time, so we are looking at a disparity between their 9

7 percent and what is being provided to the ALEC, which is 16

8 percent.

9   THE WITNESS: That's right. I'm not saying that all 96

10 ALEC failures should be paid on. Because if there was parity

11 there would be some ILEC failure. So I'm not saying that all 96

12 should be paid on. And, again, because of the problems with this

13 table, my understanding is that there would be no payments made.

14 So I don't want to get into too many details on this particular

15 table because of the problems with it. But, again, I'm not

16 saying that every ILEC failure is a transaction that should be

17 paid, just that the formula that is used here does not

18 necessarily lead to anything approximating a reasonable

19 definition of affected volume.

20   COMMISSIONER DEASON: So you don't have a recommended

21 way to improve this?

22   THE WITNESS: No, I don't. Let me mention one other

23 concern I had about the table, which is that you will notice in

24 the last column there are numbers in seven of the ten rows, and

25 three of the rows have a blank for affected volume. And that

1 comes about in one of the later steps. I'm not sure, I think it

2 is Step 6 indicates the rule for determining whether or not there

3 should be an entry in the column. I disagree with the rationale

4 for excluding certain cells because those cells -- given that the

5 way they compute the volume proportion takes into account all ten

6 cells, I believe that the affected volume should be computed for

7 all ten cells. In particular, the three cells that are not

8 included there have contributed to a reduction in the volume

9 proportion, and so it seems rational -- it seems mathematically

10 inconsistent to me to exclude them from the computation of

11 affected volume.

12 COMMISSIONER DEASON: But you would agree for those

13 three cells it appears that BellSouth provided a greater degree

14 of service to the ALEC than they provided to themselves.

15 THE WITNESS: That is correct. However, that has been

16 taken into account by the fact that those three cells would have

17 reduced -- would have made the truncated z less extreme, which

18 would have led to a smaller parity gap and, therefore, a smaller

19 volume proportion. And so BellSouth certainly deserves credit

20 for those three cells, but I believe that they have already

21 received it in the volume proportion, and there is no reason to

22 then use it in the affected volume.

23 BY MR. FUDGE:

24 Q   Doctor Bell, if you look at the second row in that

25 table, and you see that the number of ILEC observations is 600,

1   and that the number of missed installations is 96. Suppose that

2   there was a 95 percent benchmark. That would mean that BellSouth

3   would be able to miss 30 installations, so does that mean that

4   there would be penalties on the 66 remaining missed

5   installations?

6   A   So I assume that what you are doing is modifying this

7   example so that it is no longer a retail analog. So that we

8   ignore BellSouth data, and we set this as a benchmark where they

9   have to make 95 percent of the installations on time?

10   Q   Yes.

11   A   Yes. Then the benchmark would -- under the benchmark

12 you would expect them to miss only 30, and so there would be an

13 excess of 66.

14   Q   All right.

15   A   Now, that is not -- that calculation has nothing to do

16 with the JALEC plan.

17   Q   In the ALECs proposed penalty payment mechanism, do you

18 agree that penalties are based on the presence of discrimination

19 in a particular measure with greater penalties assessed as a

20 statistical certainty of discrimination increases?

21   A   Yes.

22   Q   Earlier you were asked by Mr. Lackey about the table

23 that you prepared and whether BellSouth's proposal is accurately

24 reflected in that table. Do you remember that question?

25   A   Yes.

1   Q   Would you please explain how you believe BellSouth's

2   proposal implements the balancing critical value technique for

3   proportion measures?

4   A   There is a critical step in -- maybe critical is not

5   the right word to use in talking about balancing critical values.

6   There is an essential step in computing the balancing critical

7   value which requires specification of an alternative hypothesis.

8   Let's assume that the BellSouth percentage was five percent. We

9   are going to balance at some ALEC proportion that is assumed to

10   be larger.

11   There are a number of ways we could come up with that

12   proportion. We could simply specify it based on some knowledge

13   about the business, or we could do it indirectly through a

14   parameter delta that involves a transformation that is described

15   in my testimony, or one could do it, for example, using an odds

16   ratio. If one chose an odds ratio of 2, that would imply an ALEC

17   proportion of almost 10 percent, just slightly less than 10

18   percent. And then once the alternative hypothesis is determined,

19   the two methods pretty much converge again and would be very

20   similar. Excuse me, once the alternative hypothesis -- yes, they

21   would be very similar.

22   Q   So are you saying that your table does reflect the

23   methods that you just described?

24   A   I'm sorry, I couldn't hear.

25   Q   Are you saying that your table reflects the methods for

1 using the balancing critical value that you just described?

2   A   No. My table reflects the impact of delta on

3 proportions for the method that the JALECs proposed. It does not

4 reflect the value of psi that might be used in BellSouth's plan.

5 However, I do think it bears some relevance to the BellSouth

6 plan. This same table was presented in Georgia by Doctor

7 Mallows. I believe it was the same table, it may have been. It

8 had slightly different rows.

9   It was presented by Doctor Mallows for use in helping

10 the Georgia Commission determine a value of delta to be used for

11 means. And I think it does -- it can be instructive in that

12 sense, although I will admit that a more appropriate exhibit for

13 understanding the impact of delta for mean measures would be the

14 table that appears and the discussion surrounding it that appears

15 in my rebuttal testimony that looks at a measure called time to

16 provision a dispatched retail or residential order.

17   Q   If your table were to reflect the BellSouth's approach,

18 how would the numbers change?

19   A   Well, the way the table would change is two-fold.

20 Instead of the first row on the right saying delta, it would have

21 an entry called psi, P-S-I, the Greek letter psi. And then under

22 that instead of .25, .5, and 1.0 would be alternative values for

23 the parameter psi. None of these values would make sense for

24 psi. Psi would always be a value greater than 1. So it might

25 have columns for 1.5, 2, and 3. And then the entries in the

1 table would look something like that, but they would all be

2 different than the ones shown here. But the basic format of the

3 table would be similar except delta would be replaced by psi and

4 the values would all change.

5   MR. FUDGE: Thank you, Doctor Bell.

6   CHAIRMAN JACOBS: Questions, Commissioners. Redirect.

7   REDIRECT EXAMINATION

8 BY MR. PRESCOTT:

9   Q   Doctor Bell, to your knowledge has the value of psi

10 ever been an issue in this docket?

11   A   I have not seen any direct discussion of it. I know

12 Doctor Ford mentions it, but I do not believe that he describes a

13 value. Mainly he discusses that there would need to be a

14 decision about it. Doctor Mulrow mentions values of psi, but

15 does not, to my knowledge, advocate any particular value.

16   Q   Okay. With respect to the truncated z, is that a

17 statistical procedure for determining a test statistic?

18   A   Truncated z is a test statistic, yes.

19   Q   And the truncated z operates separate from, would you

20 say, or would you agree that it -- well, does it operate

21 separately from the remedy calculation? Is it a separate

22 calculation as opposed to truncated z?

23   A   You mean the remedy calculation?

24   Q   Right.

25   A   The truncated z is separate from the remedy

1   calculation. In the JALEC plan, the remedy calculation -- I'm

2   sorry, the JALEC plan does not use truncated z, so we are talking

3   about the BellSouth plan. The BellSouth plan does use the

4   truncated z in its remedy plan specifically in Step 4 of the

5   Exhibit of Mr. Coon's exhibit that we were just talking about in

6   computing the parity gap.

7   Q   So there could be a separate remedy calculation used

8   other than the one that is proposed by BellSouth with truncated

9   z?

10   A   That's right. I mean, there is this connection that

11   the truncated z from the statistical component is used in the

12   remedy calculation, but each could be done separately.

13   MR. PRESCOTT: Nothing further.

14   CHAIRMAN JACOBS: Very well. Did we mark --

15   MR. PRESCOTT: I don't think we marked --

16   CHAIRMAN JACOBS: -- the exhibits, Doctor Bell's

17   exhibits. Why don't we mark Composite Exhibit 27, and those

18   are -- I think it was the 1 through 2, correct?

19   MR. PRESCOTT: Are we on 27 or 26?

20   MR. CARVER: We are on 27.

21   CHAIRMAN JACOBS: 27. The late-filed was 26, so we

22   will make that Composite Exhibit 27. And without objection --

23   MR. PRESCOTT: I would move it into the record.

24   CHAIRMAN JACOBS: -- show it moved into the record.

25   Thank you, Doctor Bell. You are excused.

1   The next witness, Doctor Ford.

2   (Composite Exhibit 27 marked for identification and

3 admitted into the record.)

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5   (Transcript continues in sequence in Volume 7.)

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1   STATE OF FLORIDA   )

2   :   **CERTIFICATE OF REPORTER**

3   COUNTY OF LEON   )

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            I, JANE FAUROT, RPR, Chief, FPSC Bureau of Reporting
5   FPSC Commission Reporter, do hereby certify that the
    Hearing in Docket No. 000121-TP was heard by the Florida Public
6   Service Commission at the time and place herein stated.

7   IT IS FURTHER CERTIFIED that I stenographically
    reported the said proceedings; that the same has been
8   transcribed under my direct supervision; and that this
    transcript, consisting of 184 pages, Volume 6 constitutes a true
9   transcription of my notes of said proceedings and the and the
    insertion of the prescribed prefiled testimony of the
10 witness(s)..

11   I FURTHER CERTIFY that I am not a relative, employee,
    attorney or counsel of any of the parties, nor am I a relative
12 or employee of any of the parties' attorney or counsel connected
    with the action, nor am I financially interested in the action.

13
            DATED THIS 2ND DAY OF MAY, 2001.
14

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16   _____
                     JANE FAUROT, RPR
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17   Chief, Bureau of Reporting
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