

VOTE SHEET

AUGUST 14, 2001

RE: DOCKET NO. 000121-TP - Investigation into the establishment of operations support systems permanent performance measures for incumbent local exchange telecommunications companies.

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

RECOMMENDATION: Staff recommends the Commission approve the stipulated position of the parties.

**APPROVED**

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

*Michael A. Palesti*  
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*J. Terry Deason*  
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REMARKS/DISSENTING COMMENTS:

*Commissioner Deason dissented from majority decision in Issues 4a, 4b, and 4c.*

DOCUMENT NUMBER-DATE

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

RECOMMENDATION: All 71 metrics proposed by BellSouth should be adopted as part of the Florida SQMs. Additionally, the following four metrics should be included in the Florida Service Quality Measures:

Percent Order Accuracy

Percent Completion/Attempts without a Notice or with less than 24 Hours Notice

Percent Completion of Timely Loop Modification

Percent Billing Errors Corrected in X Days

**APPROVED**

*with understanding staff will gather additional information on No. 11, Mean Jeopardy Interval for Maintenance*

*and Trouble Handling, for 6-month review, and to include it in OSS to extent possible, and with clarification at conference concerning No. 5, Percent of orders Canceled or Supplement*

ISSUE 1b: What are the appropriate business rules, exclusions, at the Request of calculations, and levels of disaggregation and performance standards for the ILE each metric?

RECOMMENDATION: The Commission should adopt the BellSouth business rules, disaggregation and standards as proposed, with the exception of the changes reflected in Attachments 3, 4 and 5 of staff's August 2, 2001 memorandum.

**APPROVED**

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

RECOMMENDATION: Staff believes that the metrics displayed in the "Staff Recommended" column in Attachment 6 should be included in the Florida Performance Assessment Plan as Tier 1 and Tier 2 Enforcement Metrics.

**APPROVED**

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

RECOMMENDATION: The appropriate level of disaggregation for compliance reporting is specified in Attachment 7. This recommendation includes more detailed reporting of product and mechanization disaggregation than that proposed by BellSouth.

**APPROVED**

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

RECOMMENDATION: Staff recommends BellSouth be required to post data and reports for all approved performance measures to its Interconnection Services Web site. The raw data that supports all reports derived from PMAP should also be provided on the Web site. Each report should contain the information specified in the BellSouth SQM "Report Structure" section. Staff would like to encourage BellSouth to consider incorporating these measures into PMAP if at all possible. Additionally, this issue can be revisited during the six-month review period to determine if additional changes should be made.

**APPROVED**

*with understanding that BellSouth be encouraged to take action to incorporate measures into PMAP as soon as possible.*

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

RECOMMENDATION: Staff recommends that BellSouth be required to post data and reports for all approved performance measures via its Interconnection Services Web site. These reports should be posted by the 30th day after the month in which the reported activity occurs.

**APPROVED**

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

RECOMMENDATION: Staff believes the Commission has the authority under state and federal law to implement the measures, benchmarks, and analogs recommended by staff in this proceeding. Staff also believes that the Commission can implement the Tier 2 penalties, which are payments to the State.

As for the Tier 1 payments to ALECs, staff believes it is not necessary for the Commission to determine at this time whether or not it has authority to enforce payments to ALECs under this plan, or otherwise enforce the self-effectuating payment provisions, because it appears that BellSouth is willing to implement such a plan, as long as it is reasonable. A problem only arises if BellSouth contends that any plan approved by the Commission is unreasonable. Only then would the Commission really need to take a stand on this issue. Staff suggests that the Commission need not take a firm stance on this aspect of its authority at this time. If the reasonableness of ALEC payments under a plan approved by the Commission is contested, the Commission should then make its determination based on the state of the law at the time its authority is actually contested.

As for the Tier 2 penalties, staff believes that Section 364.285, Florida Statutes, allows the Commission to penalize BellSouth for failure to comply with Commission rules, statutes, or Orders. Staff also believes that should BellSouth report that it has missed benchmarks set forth in the approved plan, such failure could be deemed to constitute a prima facie showing that the company has willfully failed to comply with the Commission's performance measures, unless BellSouth provides an explanatory response not later than 21 days of reporting that it has failed to comply with any performance measure. The company's response should be in writing and should set forth specific allegations of fact and law explaining why the situation that has resulted in noncompliance was not a "willful" violation. The Commission can then make an initial determination as to whether BellSouth's noncompliance was, indeed, willful based upon the filings. Staff notes that this initial determination would, however, need to provide BellSouth with the opportunity to request a hearing. In some

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circumstances, it may be appropriate to set the matter for an expedited hearing without the intervening step of the Commission making an initial determination based upon BellSouth's response. Staff notes that this analysis is equally applicable to the penalties recommended in Issues 5, 6, 13, and 15.

**APPROVED**

*with directive to staff to attempt to bring parties together on issue of self-executing remedy plan*

*Commissioner Deason dissented.*

ISSUE 4b: With BellSouth's consent?

RECOMMENDATION: Yes. Furthermore, staff notes that if BellSouth were to consent, the Tier 2 penalties could be implemented without the response period outlined in Issue 4(a).

**APPROVED**

*See 4a.*

*Commissioner Deason dissented.*

ISSUE 4c: Without BellSouth's consent?

RECOMMENDATION: Staff's recommendation on this issue is the same as set forth in Issue 4a.

**APPROVED**

*See 4a.*

*Commissioner Deason dissented.*

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

RECOMMENDATION: Staff recommends that BellSouth be required to develop a Performance Assessment Plan that includes a self-executing voluntary enforcement mechanism if performance data and reports are not posted to the BellSouth Interconnection Web site by the due date.

**APPROVED**

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

RECOMMENDATION: Staff recommends that BellSouth be required to develop a Performance Assessment Plan that includes a self-executing voluntary enforcement mechanism if performance data and reports are not posted to the BellSouth Interconnection Services Web site by the due date. Staff recommends that the penalty be no less than \$2,000 per day for the aggregate of any such delinquent reports. This penalty should be payable to the Florida Public Service Commission for deposit into the State General Revenue Fund. The payment should be received within fifteen calendar days of the actual publication date.

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

RECOMMENDATION: Staff recommends that BellSouth be required to develop a Performance Assessment Plan that includes a self-executing voluntary enforcement mechanism if performance data and reports are incomplete or inaccurate. Reports should be deemed to be incomplete if they do not present data for all of the required metrics. Reports should be deemed inaccurate if any of the required data is not calculated as specified in the approved Service Quality Measurement document.

**APPROVED**

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

RECOMMENDATION: Staff recommends that BellSouth be required to develop a Performance Assessment Plan that includes a self-executing voluntary enforcement mechanism if performance data and reports are incomplete or inaccurate. Staff suggests that a penalty of no less than \$400 per day should be assessed for the aggregate of all such reports. This payment should be made to the Florida Public Service Commission, for deposit into the State General Revenue Fund, within 15 calendar days of the final publication date or the report revision date.

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

RECOMMENDATION: Staff recommends the Commission approve the stipulated position of the parties.

**APPROVED**

ISSUE 8: When should the Performance Assessment Plan become effective?

RECOMMENDATION: Staff is recommending several changes to BellSouth's original performance assessment plan and to staff's strawman methodology. Staff believes that BellSouth is in the best position to modify its original plan to conform to the requirements of the Order in this docket. Therefore, staff recommends that BellSouth file a revised performance assessment plan consistent with staff's recommendation herein, within 45 days of the Final Order in this docket. Staff also requests that it be given administrative authority to approve the performance assessment plan and enforcement mechanism if it complies with the Final Order in this docket. Staff recommends that the Performance Assessment Plan become effective 90 days from the approval of the Performance Assessment Plan.

**APPROVED**

*with modifications and  
clarifications discussed  
at conference.*

ISSUE 9: What are the appropriate Enforcement Measurement Benchmarks and Analogs?

RECOMMENDATION: The appropriate Enforcement Measurement Benchmarks and Analogs are those specified in Attachment 7 under Issue 2b.

**APPROVED**



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

RECOMMENDATION: Staff does not believe root cause analysis should be implemented at this time as part of the Performance Assessment Plan.

# APPROVED

ISSUES 11 & 12:

- a. What is the appropriate methodology that should be employed to determine if BellSouth is providing compliant performance to an individual ALEC? (Tier 1 and Tier 2)
- b. How should parity be defined for purposes of the Performance Assessment Plan? (Tier 1 and Tier 2)
- c. What is the appropriate structure? (Tier 1 and Tier 2)
  1. What is the appropriate statistical methodology?
  2. What is the appropriate parameter delta, if any?
  3. What is the appropriate remedy calculation?
  4. What is the appropriate benchmark table for small sample sizes?
  5. Should there be a floor on the balancing critical value?

RECOMMENDATION:

- a. Where the standard for a measure is a retail analog, compliance should be evaluated through a statistical process. Where the standard for a measure is a benchmark, compliance should be determined by a "bright-line" comparison, with an adjustment for small sample sizes.
- b. Where a measure has a retail analog, BellSouth should be required to provide access to a competing carrier in substantially the same time and manner as it provides to itself. For those functions that have no retail analog, BellSouth should be required to provide access that would offer an efficient carrier a meaningful opportunity to compete.
- c.1. Based on staff's recommendation in Issue 2, the Truncated Z statistic should be used to evaluate compliance for enforcement measures with retail analogs. For small samples (30 or less), a permutation test

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should be used to calculate Z-scores for mean measures. In addition, the transformed data method, also known as the arcsine square root transformation, should be used to calculate Z-scores for proportion and rate measures. For small samples, the hypergeometric test, also known as Fisher's Exact Test, should be used for proportion and rate measures.

c.2. Z-Tel Witness Ford's delta function and recommended parameter values should be adopted.

c.3. BellSouth should be directed to develop a remedy plan which includes certain features. Remedies should be measure-based, rather than transaction-based, and should vary by type of measure and duration for Tier 1, and type of measure for Tier 2. The relative relationships between the various measure-based remedy payments should be consistent with the relative relationships between the various BellSouth proposed, transaction-based remedy payments. Tier 1 remedies should be set such that the average Month 1 remedy approximates the \$2,500 minimum payment recommended by the ALEC Coalition. Tier 2 remedies should be applicable after three consecutive months of violations, as proposed by BellSouth.

c.4. BellSouth's proposed benchmark table, which reflects a statistical approach based on a 95% confidence interval, should be adopted for small samples.

c.5. Based on staff's recommendation on Issues 11.c.2 and 12.c.2, there should not be a floor on the balancing critical value.

**APPROVED**

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

RECOMMENDATION: BellSouth should be required to make payments for Tier 1 and Tier 2 noncompliance by check, by the 30th day following the due date of the performance measurement report, for the month in which the obligation arose.

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

RECOMMENDATION: Staff recommends the Commission approve the stipulated position of the parties.

**APPROVED**

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

RECOMMENDATION: Staff recommends the Commission approve the stipulated position of the parties.

**APPROVED**

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

RECOMMENDATION: BellSouth has voluntarily agreed to a payment to the Commission of \$1,000 per day, to be deposited in the State's General Revenue Fund, for each day that payment is late under the Tier 2 enforcement mechanism.

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

RECOMMENDATION: If an ALEC disputes the amount paid under Tier 1 enforcement mechanisms, the ALEC should submit a written claim to BellSouth within 60 days after the payment due date. BellSouth should investigate all claims and provide the ALEC with written findings within 30 days after receipt of the claim. If BellSouth determines the ALEC is owed additional amounts, BellSouth should pay the ALEC such additional amounts within 30 days after its findings along with six percent simple interest per annum. However, the ALEC should be responsible for all administrative costs associated with resolution of disputes that result in no actual payment. Administrative costs are all expenses that are incidental in nature and reasonably incurred in the resolution of the disputed matter. Such costs would include, but not be limited to, postage, travel and lodging, communication expenses, and legal costs. If BellSouth and the ALEC are unable to reach a mutually agreeable settlement pertaining to the amount disputed, the Commission should settle the dispute. If Commission intervention is required, the dispute should be settled through mediation conducted by staff.

**APPROVED**

ISSUE 17: What is the appropriate mechanism for ensuring that all penalties under Tier 1 and Tier 2 enforcement mechanisms have been paid and accounted for?

RECOMMENDATION: At the end of each calendar year, an independent accounting firm, mutually agreeable to the Commission and BellSouth, should certify that all penalties under Tier 1 and Tier 2 enforcement mechanisms were paid and accounted for in accordance with Generally Accepted Accounting Principles. Furthermore, staff contends that these audits should be performed based upon valid audited data of BellSouth's performance measures.

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

RECOMMENDATION: Staff recommends that BellSouth not be held liable for performance measure failures resulting from circumstances beyond BellSouth's control. Staff recommends the following limitations of liability:

1) BellSouth will not be responsible for an ALEC's acts or omissions that cause performance measures to be missed or failed, including, but not limited to, accumulation and submission of orders at unreasonable quantities or times or failure to submit accurate orders or inquiries. BellSouth shall provide the ALEC with reasonable notice of such acts or omissions or provide the ALEC with any such supporting documentation.

2) BellSouth shall not be obligated for penalties under Tier 1 or Tier 2 Enforcement Mechanisms for noncompliance with a performance measure if such noncompliance was the result of an act or omission by the ALEC that was in bad faith.

3) BellSouth shall not be obligated for penalties under Tier 1 or Tier 2 Enforcement Mechanisms for noncompliance with a performance measurement if such noncompliance was the result of any of the following: a Force Majeure event; an act or omission by an ALEC that is contrary to any of its obligations under the Act, Commission rule, or state law; or an act or omission associated with third-party systems or equipment.

In addition to these specific limits of liability, staff notes that BellSouth may petition the Commission to consider a waiver based upon other circumstances.

**APPROVED**

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

RECOMMENDATION: Staff recommends that the Commission's Performance Assessment Plan include an absolute annual cap, limiting total annual payments under Tier 1 and Tier 2 as specified in Issue 19b.

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

RECOMMENDATION: Staff recommends the absolute annual cap for Tier 1 and Tier 2 payments be set at 39 percent of BellSouth's annual Florida net operating revenues, based upon the most recently reported ARMIS data.

**APPROVED**

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

RECOMMENDATION: Staff does not recommend that penalties in excess of the annual absolute cap be considered by the Commission.

**APPROVED**

*with modification made  
at conference*

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

RECOMMENDATION: Staff recommends that the absolute cap on Tier 1 and Tier 2 payments apply on an annual basis from the effective date of the Performance Assessment Plan as determined in Issue 8.

**APPROVED**

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

RECOMMENDATION: No. The Performance Assessment Plan should not include a Market Penetration Adjustment.

**APPROVED**

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

RECOMMENDATION: No. The Performance Assessment Plan should not include a Competitive Entry Volume Adjustment.

**APPROVED**

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

RECOMMENDATION: Yes. Third-party audits of BellSouth's Performance Assessment Plan metrics and reports should be required. The metrics and reports should be audited at a state level unless the data is only reported and collected at a regional level.

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

RECOMMENDATION: A comprehensive independent third-party audit of the Performance Assessment Plan data and reports for both BellSouth and the ALECs should be conducted for the current year data for each of the next five years. BellSouth, the ALECs, and the Commission should jointly determine the scope of the audit.

**APPROVED**

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

RECOMMENDATION: The cost of third-party audits should be borne by BellSouth.

**APPROVED**

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

RECOMMENDATION: In Issue 25, staff recommends for the cost of third-party audits to be borne by BellSouth. If the Commission chooses to approve this recommendation, the third-party auditor should be selected by BellSouth, and subject to confirmation by the Commission staff to ensure adherence to the general standards of the Institute of Internal Auditors.

**APPROVED**

*with understanding the ALECs will have a voice in selection of the auditor, with consultation by staff*



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

RECOMMENDATION: No. BellSouth should not have to undergo an individual audit (i.e., mini-audit) whenever an ALEC has reason to believe the data collected for a performance measure is flawed or that the report criteria are not being followed.

**APPROVED**

*with modification that Commission will revisit if necessary*

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

RECOMMENDATION: In Issue 27a, staff recommends that BellSouth should not have to undergo individual audits (mini-audits) of performance measures at the request of the ALECs. However, if the Commission chooses to authorize these audits, an ALEC should be allowed to request in writing that a review be performed by BellSouth on specific measures and/or submeasures. If within 30 days of the request, the issue has not been resolved, the ALEC may, at its own expense, commence a focused audit by an independent third party upon providing BellSouth with five business days' advance notice.

**NO VOTE**

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

RECOMMENDATION: Yes. BellSouth should retain the performance measurement raw data files for a period of 18 months and further retain the monthly reports produced in PMAP for a period of three years.

**APPROVED**

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

RECOMMENDATION: Staff recommends that the definition of "affiliate" contained in the Act be used for purposes of the Performance Assessment Plan. The Act states the following:

The term "affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this paragraph, the term "own" means to own an equity interest (or the equivalent thereof) of more than 10%.

**APPROVED**

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

RECOMMENDATION: Yes. Staff recommends that only BellSouth ALEC affiliate data should be reported for purposes of monitoring under the Performance Assessment Plan. BellSouth should be required to provide monthly results for each metric for each BellSouth ALEC affiliate; however, only the Commission should be provided the number of transactions or observations for BellSouth ALEC affiliates. Staff further recommends that BellSouth be directed to inform the Commission of any changes regarding non-ALEC affiliates' use of its OSS databases, systems, and interfaces.

**APPROVED**

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

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

RECOMMENDATION: The Commission should monitor the BellSouth ALEC affiliate performance metrics results provided each month until an assessment can be made of the data's relevance and significance. At this time, no use should be made of the affiliate data for determining Tier 1 or Tier 2 compliance.

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ISSUE 31: Should this docket be closed?

RECOMMENDATION: No. Staff recommends this docket to remain open pending administrative approval by staff of the final Performance Assessment Plan. BellSouth should prepare and submit a plan for implementing the requirements of the Final Order in this docket within 45 days of its issuance. This document, entitled "Florida Performance Assessment Plan," should document BellSouth's proposed implementation of the plan and should include, but not necessarily be limited to, detailed descriptions of the following key elements:

1. Administration Plan
2. Service Quality Measures
3. Tier 1 and Tier 2 Enforcement Measures
4. Analogs and Benchmarks
5. Calculation Procedures
6. Statistical Methodology

This docket should also remain open for the periodic reviews of the Performance Assessment Plan to begin six months after the Commission's order, as recommended in Issue 7.

**APPROVED**

*with understanding/clarification  
that decision here will agree  
with decision in Issue 8. Further,  
staff should make any changes  
necessary to agree with decisions  
made in other issues.*