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BY HAND DELIVERY
Ms. Blanca Bayó, Director
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Room 110, Easley Building
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2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Re: Docket No. 000121A

Dear Ms. Bayó:

Enclosed for filing on behalf of AT&T Communications of the Southern States, LLC, WorldCom, Inc., and DIECA Communications, Inc. d/b/a Covad Communications Company (hereinafter the "ALEC Coalition") is the original and fifteen copies of the ALEC Coalition's Response to BellSouth's Comments on the ALEC Coalition's simplified severity component proposal in the above referenced docket.

Please acknowledge receipt of this letter by stamping the extra copy of this letter "filed" and returning the same to Lisa Riley in the enclosed stamped envelope.

Thank you for your assistance with this filing.

Sincerely yours,

Tracy W. Hatch /las

Tracy W. Hatch

TWH/las
Enclosure
cc: Parties of Record

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Investigation into the Establishment of Operations Support System Permanent Performance Measures for Incumbent Local Exchange Telecommunications Companies (BellSouth Track)	))))))	Docket No. 000121A-TP Filed: May 9, 2003

ALEC COALITION RESPONSE TO BELLSOUTH COMMENTS

The Alternative Local Exchange Carrier Coalition ("ALEC") Coalition[1] hereby files its Response to one of two BellSouth Telecommunications, Inc. ("BellSouth") filings in this docket dated April 10, 2003.[2] This Response addresses BellSouth's remedy calculation and responds to BellSouth's comments on the simplified ALEC severity component proposal and ALEC Coalition comments on the revised BellSouth proposal.

I. INTRODUCTION

Almost all of the arguments in BellSouth's April 10 filing in this docket[3] rest on two erroneous contentions. The first is that severity of violations can be indexed by the number of "failed ALEC transactions." The second is that BellSouth's proposed Parity Gap methodology produces an upper bound for the number of failed ALEC transactions. Both contentions are false for a number of reasons discussed below. Specifically, we show that:

- The notion of failed transactions makes absolutely no sense for interval measures.
- BellSouth lacks a valid method for specifying the monetary value of a failed transaction.

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1 For purposes of these comments, the ALEC Coalition consists of AT&T Communications of the Southern States, Inc., ("AT&T"), WorldCom, Inc. ("WorldCom"), and DIECA Communications, Inc. d/b/a Covad Communications Company ("Covad"),

2 The Response of the ALEC Coalition is directed to the Assessment of "Update to Simplified ALEC Severity Component Proposal and ALEC Coalition Comments on Revised BellSouth Proposal," filed by BellSouth on April 10, 2003 ("April 10th filing.")

- The Parity Gap methodology does not measure failed transactions—much less the severity of a violation.
- The BellSouth proposal continues to rely directly on a statistical decision rule to determine remedy amounts, in direct violation of the Commission Order.[4]

In addition, BellSouth's criticisms of the simplified ALEC proposal rely on repeated misunderstandings and misstatements of the proposal.

II. THE NOTION OF FAILED TRANSACTIONS MAKES ABSOLUTELY NO SENSE FOR INTERVAL MEASURES

BellSouth's claim that a z-score (the parity gap) divided by four can measure failed transactions (April 10, p. 1) is preposterous, because it is impossible to unambiguously define the number of failed transactions for an interval measure. Given the infinite number of distributions that can produce a particular mean, and the ability to alter any of the elements of that distribution to shift the mean, it is simply impossible to define, much less measure, the number of transactions that would adjust two means to parity. A means difference could be eliminated by improving the service levels of those receiving the worst service, those receiving the best service, those receiving relatively average performance, or any combination thereof. Consider a simple example, keeping in mind that the truncation and balancing methods used in SEEM do not alter the fundamental conclusions drawn from this example.

Example: Assume the BellSouth mean interval for 5,000 transactions is 3 days with a standard deviation of 4.5. Also, assume the ALEC mean is 4.5 days, with standard deviation of 4.5 days based on 100 transactions. The z-score for this means difference is about 3.3, which indicates discrimination with a high degree of certainty. The ALEC customers face a cumulative disparity of 150 days, the 450 total days for ALEC customers minus the 300 days that would occur with exact parity for 100 customers.

Parity for this example (a reduction of 150 days for ALEC customers) could be achieved in an almost endless number of ways. For example, parity could conceivably be achieved by reducing every ALEC

[4] Order No. PSC-01-1819-FOF-TP in this docket, dated September 10, 2001 ("Order")

interval by 1.5 days, or by improving an arbitrary 50 transactions by 3 days each, or by improving the worst 15 transactions by 10 days each. Another way parity could be achieved is by improving the worst 10 transactions by 10 days, the best 10 transactions by one day, and twenty transactions in the middle by 2 days each. This simulation could go on *ad infinitum*. The concept of failed transactions is obviously meaningless in this context.

III. BELLSOUTH LACKS A VALID METHOD FOR SPECIFYING THE VALUE OF A FAILED TRANSACTION

Even if one chooses some arbitrary definition for the number of failed transactions for interval measures, the BellSouth proposal still lacks a valid way to assign a monetary value to each failed transaction. Suppose that instead of an ALEC mean of 4.5 days in the example, the ALEC mean was 6.0 days, so that ALEC customers faced a cumulative disparity of 300 days. Clearly, the harm done to ALEC customers is much greater, yet there is no guarantee that a measure of failed transactions would reflect that difference. The problem is that the concept of failed transactions does not incorporate the magnitude of the disparity.

The concept of failed transactions falls down even for proportion measures. The ALEC Coalition filing of March 18, 2003[5] illustrates how performance failures for a set of transactions can adversely affect ALECs far beyond those immediate transactions—especially if performance failures are persistent. Although BellSouth admits to this concern, "there is nothing in economic theory that precludes the setting of remedies to compensate for those consequences" (April 10th filing at p. 8), it makes no effort to deal with the problem.

IV. THE PARITY GAP METHODOLOGY DOES NOT MEASURE SEVERITY

In addition to the problems discussed above, BellSouth's Parity Gap methodology does not measure failed transactions—much less the severity of a violation. First, BellSouth truncates the Parity

[5] "Update to Simplified ALEC Severity Component Proposal and ALEC Coalition Comments on Revised BellSouth Proposal," filed in this docket on March 18, 2003 at p. 4.

Gap — the z-score — at 4, or the z-score divided by 4 at 100%. , " 'If the parity gap truly measured transactions, the parity gap could not exceed 100%, and there would be no reason for the truncation' ". Order at p. 161 (quoting witness George Ford) Can it be that the z-score reliably measures failed transactions well up to a value of 4, at which point its reliability collapses entirely? Obviously not. Clearly, the Parity Gap does not really measure transactions. BellSouth's own witness admits this fact, observing that the concept of affected transactions "is not a clear concept", *Id.* at p. 160, and is only "roughly right" in the sense that the "resulting penalties should be sufficient to deter discriminatory behavior". *Id.*

This truncation of the Parity Gap is interesting in another respect. Once the Parity Gap (or z-score) reaches 4, then 100% of the affected volume is penalized. This result implies that every ALEC transaction (from a cell with a negative z-score) received discriminatory service.[6] In other words, not a single customer received service at or better than the BellSouth mean. Clearly, this is a particularly odd situation and very unlikely to occur. That the Parity Gap must be truncated and that it needs to be truncated at 100% indicates that it fails to accurately measure failed transactions.

BellSouth, explicitly recognizing that transactions cannot be measured, appeals to a simulation using linear programming that indicates that the Parity Gap overstates the potential number of "failed transactions," whatever that means. However, as shown by the simple example above, the concept of failed transactions is meaningless when contemplating how many transactions need to be adjusted to achieve parity.

Why BellSouth insists on the preference for measuring affected transactions is odd given that it contends in its April 10 filing that "the performance plan was never intended to provide remedies to (or for) *individual* affected customers." (April 10th filing at p. 2. Despite this observation, BellSouth is asserting that the Parity Gap measures the sum of "individual affected customers," (, *Id.* at Section I, paragraph number 5) which is the same as "failed transactions." Further, BellSouth argues that "remedy

6 That is, every ALEC transaction that was part of a cell where the z-score was negative.

payments ... are supposed to be based on differences in *average* performance." (.). First, "differences in average performance" is not "failed transactions." Thus, if BellSouth is correct in the purpose of the plan, it is incorrect in its proposed implementation of the plan. Second, as BellSouth witness Dr. Taylor so compellingly argued, the z-score (or Parity Gap) is an unreliable indicator of the difference in average performance; a position with which the Commission concurred. Further, as the ALEC Coalition showed with numerical examples, the Parity Gap can decrease with increasing disparity. This fact is undisputable, despite BellSouth's attempt in its recent filing to say otherwise by altering the valid conceptual experiment conducted by the ALECs.[7]

In contrast, the ALEC plan bases its remedy payments directly on the "differences in average performance." There are few more sensible measures of the difference in average performance than the percentage difference in performance levels, which is exactly what the ALEC plan employs as a measure of disparity. This measure of disparity is used by a number performance plans, including most plans across the SBC and Qwest regions.[8] These disparity levels are then multiplied by the total ALEC sample size to produce disparate transactions. Interestingly, these plans are often described as transactions-based plans, but of course cannot actually measure affected transactions.

BellSouth repeatedly attacks the ALEC plan for not measuring failed transactions. As plainly shown here, the Parity Gap does not and cannot measure failed transactions. Thus, no party has proposed a transactions-based plan. This is true even for proportion measures, where the disparate transactions can reliably be measured as the difference between the ALEC and ILEC proportions multiplied by sample size, or

$$(P_{ALEC} - P_{ILEC}) \times N_{ALEC} = \text{Disparate Transactions},$$

where P is the proportion and N is the sample size. Despite the ability to measure disparate transactions, BellSouth instead applies the Parity Gap to these measures thereby foregoing the ability to measure

7 The ALECs never argued that the Parity Gap would fall with disparity if sample size was constant, which is the claim BellSouth responded to.

disparate transactions for these measures. The difference is obvious. The affected volume, which is used to compute remedy payments, is

$$\min\left\{\left[\frac{P_{ALEC} - P_{ILEC}}{S_{ILEC}\sqrt{1/N_{ALEC} + 1/N_{ILEC}}} \Big/ 4\right], 1\right\} \times P_{ALEC} \times N_{ALEC}$$

where S is the standard deviation. With multiple cells, the multi-step algorithm for truncated z makes the formula even far more complicated. Obviously, the complex calculation does not measure disparate transactions, even when disparate transactions could be measured.

V. BELLSOUTH'S REMEDY PROPOSAL VIOLATES THE COMMISSION ORDER BY RELYING ON A STATISTICAL DECISION RULE

BellSouth's April 10th filing is the most recent of its many attempts to convince this Commission to ignore its Order rejecting the use of statistical decision rules for the measurement of disparity between the performance levels of BellSouth and the ALECs. What is perhaps most odd about BellSouth's untenable position is that the Commission relied exclusively on BellSouth's own witness's testimony to reach its conclusion:

> Witness Taylor explains that "a z-score that is twice as distant from a critical value than another could easily be for reasons other than simply that one of the performance means is twice as large as the other." According to witness Taylor, z-scores are influenced by "the mean performance when BellSouth serves itself, the mean performance when BellSouth serves the ALEC, the standard deviations for both, and the number of measurements made in each case." ... We agree with BellSouth's witness Taylor's assessment that the statistical decision rule is not helpful in assessing severity.

Order at p. 161-162. Here, the Commission explicitly rejects the use of a statistical decision rule – that is, a z-score – to measure severity. Yet, in its April 10 filing, BellSouth equates the Parity Gap to the z-score (p. 6: "... the parity gap (or z-score) ...", p. 7: "Parity Gap (z-score)"). Indeed, as is stated plainly in

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[8] The percent difference is often measured from a statistically-adjusted mean for the incumbent.

BellSouth's own documents, *the parity gap is nothing more than a z-score*. If a z-score cannot measure severity, then neither can a z-score divided by 4. Therefore, it is simply impossible for this Commission to use the Parity Gap as a measure of severity and remain consistent with its earlier decision.

VI. BELLSOUTH'S RESPONSES TO ALEC COALITION CRITICISMS ARE FLAWED

In Section I of its filing, BellSouth tries to respond to various ALEC Coalition criticisms of its proposal. For reasons generally discussed above, each of BellSouth's arguments is off base. Below, we briefly address each argument.

1. BellSouth tries to imply that the ALEC coalition's disparity measure is based on a statistical decision rule because it shares the same numerator as BellSouth's Parity Gap. However, the ALEC Coalition's disparity measure indicates the size of the observed disparity, *independent of sample size and the standard deviation*, while the Parity Gap, which grows with sample size and shrinks with the standard deviation, is exactly the same as the z-score used in the statistical decision rule.
2. BellSouth complains that the ALEC Coalition's proposal is sensitive to the total number of ALEC transactions rather than the number of failed transactions. BellSouth ignores the fact that for proportion measures, the disparity measure directly incorporates the difference between ALEC and BellSouth customers in the *proportion of failed transactions*. As noted above, the notion of failed transactions does not even make sense for mean measures.
3. BellSouth complains about the parameters, but not the accuracy, of Tables 1 and 2 in the ALEC Coalition's filing of March 18, 2003. The tables were simply designed to illustrate that the Parity Gap does not measure disparity, and that it can decrease even as the disparity grows (with decreasing sample sizes). Nothing in the pages of BellSouth text and tables refutes those points.
4. BellSouth objects to the ALEC Coalition statement that there is "no theoretical justification for the factor of ¼ use to translate the Parity Gap calculation into a volume proportion." Bellsouth cites its discussion of linear programming showing that the Parity Gap produces a conservative bound for the number of failed transactions. As explained above, the number of failed

transactions is a failed concept. That the Parity Gap can be shown to approximate it in some particular and limited circumstances provides no credibility for that methodology. The mere fact that such complex mathematics are required to show that the Parity Gap may be, in some circumstances, a useful proxy for failed transactions proves that the Parity Gap does not measure failed transactions.

5. BellSouth discounts the ALEC coalition's criticism that trying to define failed transactions for interval measures ignores the sizes of differences. BellSouth states: "Rather, remedy payments—made to ALECs, individually or collectively—are supposed to be based on differences in *average* performance (for the entire volume of ALEC and ILEC transactions)". April 10 filing at p. 2. We agree. The ALEC Coalition's disparity measure -- which focuses on differences in average performance -- abides by this principle; attempts to count failed transactions violate it, and are doomed to failure.

6. BellSouth defends capping the Parity Gap at 4 and the affected volume at the number of failed transactions in negative cells. This argument ignores the ALEC Coalition's real concern that failed transactions cannot measure the severity of an observed disparity (see earlier discussions), and that failed transactions cannot be measured at all (for interval measures).

VII. BELLSOUTH REPEATEDLY MISREPRESENTS DETAILS OF THE SIMPLIFIED ALEC PROPOSAL

BellSouth discounts the fact that the simplified ALEC proposal has reduced the number of parameters from eight to three (*Id.* at p. 9). Instead, it argues that NERA's original criticism was "that a huge number (up to 65,000) of arbitrary configuration of those parameters could be entertained." (*Id.)* That questionable argument is now even farther off base since, even by NERA's calculations, the smaller number of parameters would reduce the number of configurations by a factor of 1000.

Bellsouth implies that the ALEC Coalition has proposed minimum remedy payments even when BellSouth is not in violation (*Id.*). That is not true. The simplified ALEC proposal only addresses incorporation of severity into the remedy payments, the task requested by Staff. The statistical decision rules used to determine compliance are not part of this discussion.

BellSouth states that the ALEC Coalition formula suggests that the maximum payment would apply for a "*one* percent difference in means." (*Id.* at p. 10) That is false. Both the formulas and examples in Attachment 1 of the ALEC Coalition filing clearly indicate that the maximum payment is reached when the ALEC mean is 100 percent larger than the BellSouth mean.

VIII. BELLSOUTH'S DISCUSSION OF THE DEGREE OF DISAGGREGATION IS IRRELEVANT TO SEVERITY

BellSouth argues for reducing the number of submeasures, therefore, forcing very diverse cells within a submeasure. It is important not to aggregate cells with substantially different performance relative to parity for the purpose of increasing sample sizes. The reason is that truncated Z can conceal discrimination for one set of products if it is used to combine the results with those for other products. Truncated Z does not prevent parity, or better, service in a large number of cells from concealing very poor service in other cells.

Reducing submeasures can cause currently reported non-compliance performance to be concealed. The table specified below illustrates several examples of consistent non-compliance which might be concealed if the disaggregation previously ordered by this Commission is reduced:

TIER II COMPLIANCE TABLE[9]

SUBMETRICS	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.
Customer Trouble Report Rate - UNE Combo Other	N	N	N	N	N	N
Customer Trouble Report Rate - UNE Digital Loop DS1	N	N	N	N	N	N
Customer Trouble Report Rate – UNE ISDN	N	N	N	N	N	N
Maintenance Average Duration – UNE ISDN	N	N	N	N	N	N
Average Order Completion & Completion Notice Interval Distribution (Dispatch < 10) UNE Combo Other						N
Completion Notice Interval Distribution (Dispatch < 10) UNE Digital Loop DS1				N	N	N
Average Order Completion and Completion Notice Interval (AOCCNI) Distribution (Dispatch < 10) -- 2W Analog Loop Design	N	N	N	N	N	N

As illustrated in the table, the current disaggregation has been effective in not allowing non-compliance to go unsanctioned. It is understandable that BellSouth would recommend reducing disaggregation. A reduction in disaggregation directly reduces any consequences for non-compliance.

IX. BELLSOUTH'S PROPOSED REVISION OF THE SEEM FEE SCHEDULE IS NOT JUSTIFIED.

BellSouth proposes reducing the fee schedule compared to that originally proposed in SEEM "to compensate for the increased probability of Type I error — where payments are calculated on transactions that were, in fact, at parity." ("BellSouth's comments regarding calculation of penalties: parity gap versus

[9] N denotes that BellSouth's performance was non-compliant. This performance was reported in the Tier II PARIS reports.

the aggregate test statistic," April 10, 2003, Docket No. 000121A-TP (OSS).) That justification is absolutely false. BellSouth's proposed changes to the affected volume calculation do not impact the calculation of either truncated z or the balancing critical value, and therefore cannot affect the probability of a Type I error.

However, this proposed modification does illustrate the lack of foundation for setting the fee schedule amounts. If the previous dollar amounts had truly accounted for the adverse consequences of failed transactions, as measured in the old affected volume calculation, then those amounts would still be appropriate. BellSouth's proposal to reduce the amounts simply confirms that the fee schedule amounts do not reflect the adverse consequences of failed transactions.

X. CONCLUSIONS

In summary, remedy plans are far too critical to the evolution of competition to inappropriately define properties of particular calculations. The goal of the remedy plan is, as BellSouth recognizes, to eliminate differences in average performance. A well-designed plan, therefore, will penalize differences in average performance. Police do not give parking tickets to speeders; speeders get speeding tickets. If equality in average performance is the goal, then punishment should be based on deviations from equal performance. The ALEC Coalition approach does exactly this; it punishes differences in average performance. The plan has the added benefits of not pretending to accomplish something it (or any other plan) cannot, and of being consistent with the Commission's Order and mandate to Staff.

Respectfully filed this 9th day of May, 2003.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. mail on this 9th day of May 2003 to:

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