

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF BELLSOUTH)	
TELECOMMUNICATIONS, INC. FOR)	CASE NO.
THE ESTABLISHMENT OF A NEW)	2004-00391
PERFORMANCE PLAN)	

BELLSOUTH’S MOTION TO SET PROCEDURAL SCHEDULE

BellSouth, by counsel, respectfully moves the Commission to promptly set a further procedural schedule to consider BellSouth’s proposal to streamline and make more rational the current SQM/SEEM plan.

By Order of May 11, 2004, this Commission adopted for Kentucky the Georgia Performance Plan, including future modifications made by the Georgia Commission¹ as the current Kentucky Performance Plan, specifically noting, “nothing ordered herein shall serve to prohibit BellSouth from proposing a Kentucky-specific performance plan which sets out a full and complete description of the plan with associated penalties.”² This Commission further noted several items to be included in such a proposal and specifically stated that in the event BellSouth proposes such a plan, “the Commission will fully consider whether such a plan should be substituted for the current performance plan in whole or in part.” In accordance with the above statements of this Commission, BellSouth filed such a petition on August 31, 2004, resulting in the initiation of this present docket. Thereafter, on November 10, 2004, the Commission set an

¹ The SQM/SEEM plan for Kentucky was initially adopted on October 19, 2001, adopting most of the plan adopted by the Georgia Public Service Commission. In December 2002, BellSouth filed a petition with this Commission to modify the 2001 plan adopted for Kentucky.

² Order, May 11, 2004, Kentucky Public Service Commission Case No. 2001-00105, *Investigation Concerning the Propriety of InterLATA Services by BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996*, at 9

initial procedural schedule which established dates for an informal conference and for filing comments, but did not set dates for filing testimony or for hearing. Because of scheduling problems by BellSouth and other parties, the informal conference was not actually held until February 18, 2005. At the informal conference, BellSouth, interested parties, and the Staff of the Kentucky Public Service Commission (“Commission”) discussed various matters regarding review and modification of BellSouth’s performance measurement plan in Kentucky (“SQM/SEEM plan”). In response to the Commission Order and also requests raised by Staff at the informal conference, BellSouth and other parties now have filed Comments. In addition, and in accordance with the Staff request at the informal conference, BellSouth filed a procedural schedule that proposed specific dates for the filing of data requests, testimony and the hearing, all to be completed by the first week of May, 2005. Neither that proposed procedural schedule, nor any further schedule, has yet been issued.

BellSouth respectfully requests the Commission to promptly set a further procedural schedule in this case. BellSouth urges the Commission to reject the CLEC efforts at the informal conference to continue to delay this proceeding for an unspecified time. This case has been pending since August, 2004. A full procedural schedule has yet to be issued. The case initially was filed by BellSouth’s petition in accord with the specific statement in the Commission’s May 11 Order which stated BellSouth was not prohibited from proposing a Kentucky-specific performance plan and stating such a proposal would be fully considered. BellSouth’s proposal in this case also specifically addresses the Commission’s concern, as stated in the May 11, 2004 Order, to avoid unnecessarily utilizing resources, which could occur if the Commission undertook to establish an entirely new performance plan.

BellSouth proposes to streamline, simplify, and establish a rational relationship between performance and penalties in a Kentucky-specific version but to keep the underlying plan, based

on the current Georgia-based performance plan, which now is in operation in Kentucky. Instead of developing a whole new plan, admittedly a resource-intensive effort, BellSouth has proposed merely to eliminate unused measures, simplify common measures, and relate penalties to performance in the existing plan. Clearly, this is a much less resource and time intensive effort than developing a plan from scratch.

There is no rational justification for the CLECs' efforts to delay even the consideration of BellSouth's streamlining proposal. Rather, the review and revision of the SQM/SEEM plan can, and should, commence immediately in Kentucky. As noted, BellSouth's proposal to modify the SQM/SEEM plan is not a proposal to create a wholly new plan but merely is a proposal to eliminate unused measures (that is, clear out the "dead wood"), streamline redundant measures, and assure balance between performance and penalties. This type of "clean up" work can be accomplished by the Kentucky Public Service Commission to meet Kentucky's needs without awaiting developments in other states. Moreover, BellSouth's proposed review of the plan should take much less time and resources than would be required to create or develop a new plan in the first instance.

Not unexpectedly, some CLECs prefer for this Commission to delay and await establishment of a docket and the rendering of decisions in some other jurisdiction. With no apparent substantive basis to oppose BellSouth's suggested simplification to the existing plan, the CLEC Comments instead encourage the Commission to sidestep the appropriate streamlining and wait until someone else decides other cases in other states. For example, often mentioned is the suggestion that the Kentucky Commission should wait on a Florida or Georgia docket on performance plans in those states. However, it is significant that the Commenters fail to mention that Florida is making a transition from a "per-measure"-based plan to a transaction-based plan. The plan currently in use in Kentucky already is a transaction-based plan. Thus, the type of

review and considerations Florida is likely to consider will be very different from those considered here in Kentucky where, as noted, the plan already is transaction based. The Commenters ignore this significant difference between Kentucky and Florida because even though it is not productive or helpful to Kentucky to wait for developments in a state such as Florida, waiting for the Florida docket only serves the CLECs' purpose of finding reasons for further delay. In addition, waiting for Georgia is a strategy designed merely to delay consideration of necessary revisions in Kentucky's plan. It should be noted that a docket has yet to even be established in Georgia.

One Commenter suggests this Commission should deny any modification to the current plan if a single CLEC objects to the modification.³ The current plan (SEEM, Section 1.3) makes provisions for BellSouth to seek periodic review and modification of the SQM/SEEM plan. However, while the current plan notes that any CLEC may provide *input* regarding any proposed changes to the SQM/SEEM plan, it does not provide that any CLEC has the power to *veto* a proposed plan revision by merely "objecting" to BellSouth's performance under the current plan. Were that the case, the objection of a single CLEC would bring to a screeching halt any proposed plan (including the current proposal). The existing plan should be examined and simplified for at least three purposes: 1) so that the plan measures what matters; 2) so that the plan is easier to understand; and 3) so that penalties are proportionate to the level of performance. This Commission can and should move forward for these purposes.

Basic fairness compels, at a minimum, that BellSouth's proposal be considered, not side-stepped and delayed unnecessarily and indefinitely as some Commenters would have this Commission do. Accordingly, BellSouth respectfully requests this Commission issue a procedural order. Although with the passage of time it no longer is feasible to adopt the

³ However, no substantive basis has been raised by any parties with respect to BellSouth's proposal.

proposed schedule submitted by BellSouth on January 31, 2005, BellSouth urges that a reasonably expedited schedule be established without further delay. Setting a procedural schedule will provide the opportunity for review of the proposed modifications so that the Commission can “prune” the unused portion of the plan, simplify the plan to make it more understandable and useful, and also match penalties appropriately to performance. The Kentucky Public Service Commission need not, and should not, delay for an unspecified time even considering appropriate revisions for Kentucky.

Respectfully submitted,



Dorothy J. Chambers
General Counsel - Kentucky
601 W. Chestnut Street, Room 407
P.O. Box 32410
Louisville, KY 40203
(502)582-8219
dorothy.chambers@bellsouth.com

R. Douglas Lackey
Robert A. Culpepper
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0841

COUNSEL FOR BELL SOUTH
TELECOMMUNICATIONS, INC.