

**BEFORE THE COMMONWEALTH OF KENTUCKY**  
**PUBLIC SERVICE COMMISSION**  
**REBUTTAL TESTIMONY OF CHERYL BURSH**  
**ON BEHALF OF**  
**AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.**  
**AND TCG OHIO, INC.**  
**CASE NO. 2001-105**  
**JULY 9, 2001**

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

2 A. My name is Cheryl Bursh. My business address is 1200 Peachtree Street, Atlanta,  
3 Georgia.

4

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

7 A. I am employed by AT&T Corp. as a District Manager. I am responsible for  
8 performance measurement and remedy plan advocacy for the AT&T -- Southern  
9 Region. My area of expertise is the development of an effective methodology for  
10 measuring BellSouth's performance. I have represented AT&T in several  
11 regulatory proceedings, including performance measurement workshops and  
12 hearings conducted in Louisiana, Florida, North Carolina and Georgia. I have  
13 held a variety of management positions at AT&T for almost 20 years, including  
14 strategic planning, sales of large business systems and telecommunications  
15 services, system development for operation support systems, product marketing  
16 and technical support for computer systems. I have a Bachelor of Science Degree

1 from Johnson C. Smith University and a Master of Science Degree from George  
2 Washington University.

3  
4 **Q. PLEASE SUMMARIZE YOUR TESTIMONY.**

5 A. My testimony discusses why the Commission cannot rely upon BellSouth's  
6 performance reports and data prepared in accordance with BellSouth's proposed  
7 "Interim SQM" to evaluate BellSouth's § 271 compliance in Kentucky. My  
8 testimony also discusses the need for this Commission to adopt an adequate  
9 remedy plan that will ensure CLECs receive the level of service from BellSouth  
10 that will enable them to successfully compete in the provision of local telephone  
11 service in Kentucky. I describe why the remedy plan proposed by AT&T is the  
12 appropriate plan for this Commission to adopt in order to ensure that  
13 (1) BellSouth is providing service to CLECs that is in parity with that it provides  
14 to its own retail operations and affiliates, (2) the telephone industry in Kentucky is  
15 open to competition in the provision of local service, and (3) Kentucky's  
16 telephone industry remains open to competition in the event BellSouth obtains  
17 271 approval.

18 Additionally, I describe the deficiencies of BellSouth's Self-Effectuating  
19 Enforcement Mechanism ("SEEM") and I discuss the reasons why SEEM is not  
20 the appropriate remedy plan for the Commission to adopt in order to ensure the  
21 development of the competitive local telecommunications market envisioned by  
22 the Telecommunications Act of 1996 ("Act").

23  
24 **Q. HOW IS YOUR TESTIMONY ORGANIZED?**

25 A. My testimony is organized in the following sections:  
26

- 1 I. THE IMPORTANCE OF ADEQUATE STATE-SPECIFIC PERFORMANCE  
2 MEASURES  
3
- 4 II. THE KENTUCKY COMMISSION SHOULD NOT RELY ON BELLSOUTH'S  
5 PERFORMANCE REPORTS AND DATA PREPARED IN ACCORDANCE  
6 WITH BELLSOUTH'S INTERIM SQM TO EVALUATE BELLSOUTH'S  
7 SECTION 271 COMPLIANCE IN KENTUCKY
- 8 A. BellSouth's Modifications To Measures It Had Proposed
- 9 B. BellSouth Has Modified Measures From The CLEC-Proposed SQM  
10 Adopted By The Georgia Commission
- 11 C. BellSouth Failed To Comply With Specific Directions From The Georgia  
12 Commission In Its April 2001 SQM
- 13 D. BellSouth Has Failed To Make Raw Data Available As Ordered By The  
14 Georgia Commission
- 15 III. THE IMPORTANCE OF AN EFFECTIVE REMEDY PLAN
- 16 IV. AT&T'S PROPOSED REMEDY PLAN
- 17
- 18 V. BELLSOUTH'S SELF-EFFECTUATING ENFORCEMENT MECHANISM IS  
19 INADEQUATE AND SHOULD NOT BE ADOPTED BY THIS COMMISSION  
20  
21
- 22 **I. THE IMPORTANCE OF ADEQUATE STATE-SPECIFIC  
23 PERFORMANCE MEASURES**
- 24
- 25 **Q. WHAT ARE PERFORMANCE MEASURES AND WHY ARE THEY  
26 IMPORTANT?**
- 27 A. Performance measures provide a means for evaluating the level of service the  
28 Incumbent Local Exchange Carriers ("ILECs") offer to Competitive Local  
29 Exchange Carriers ("CLECs"). Early in the process of implementing the  
30 Telecommunications Act of 1996 ("Act"), the Federal Communications  
31 Commission ("FCC") emphasized that ILECs' nondiscriminatory support of  
32 CLECs is critical to the ultimate development of local competition. (See First  
33 Report and Order, *Implementation of Local Competition Provisions in the*  
34 *Telecommunications Act of 1996*, CC Docket No. 96-98 ¶315 (rel. August 8,

1 1996) (“*Local Competition First Report and Order*”).) Whether entering the local  
2 market via interconnection, resale, or the use of unbundled network elements,  
3 CLECs depend upon BellSouth’s performance in providing service to their  
4 customers. Performance measures are important because they provide a means of  
5 monitoring BellSouth’s provision of service to CLECs. Thus, in order for the  
6 Commission and CLECs to ensure that BellSouth is meeting its obligations under  
7 the Act, BellSouth must be required to fully and accurately report its performance  
8 in accordance with the Commission’s Orders. The interdependent nature of the  
9 relationship between CLECs and BellSouth makes measuring BellSouth’s  
10 performance vital to the development of local competition in Kentucky. The  
11 reported performance for making a § 271 determination should be based on the  
12 plan adopted by this Commission and not that of the Georgia Commission.

13

14 **Q. SHOULD KENTUCKY ADOPT A PERFORMANCE MEASURES PLAN?**

15 A. Yes, the Kentucky Commission should adopt a plan and evaluate BellSouth’s  
16 compliance in the context of that plan before making its recommendation on  
17 § 271 relief. The FCC has stated,

18 We recognize that metric definitions and incumbent LEC operating  
19 systems will likely vary among states, and that individual states  
20 may set standards at a particular level that would not apply in other  
21 states and that may constitute more or less than the checklist  
22 requires. Therefore, in evaluating checklist compliance in each  
23 application, we consider the BOC’s performance within the  
24 context of each respective state. For example, where a state  
25 develops a performance benchmark with input from affected  
26 competitors and the BOC, such a standard may well reflect what  
27 competitors in the marketplace feel they need in order to have a  
28 meaningful opportunity to compete. . . . [I]n making our evaluation  
29 we will examine whether the state commission has adopted a retail  
30 analogue or a benchmark to measure BOC performance and then

1 review the particular level of performance the state has  
2 required.<sup>1</sup>

3 Thus, consistent with FCC guidance, in order to obtain an accurate picture of  
4 BellSouth's performance within Kentucky, this Commission should adopt a plan  
5 and then make a § 271 recommendation based upon the performance measures  
6 and standards it has ordered BellSouth to implement in Kentucky.

7  
8 **Q. WHAT ARE THE COMPONENTS OF AN EFFECTIVE PERFORMANCE**  
9 **MEASURES PLAN ?**

10 **A.** An effective performance measures plan must have certain key characteristics in  
11 order to ensure that the overall performance measurement methodology is  
12 functional and capable of monitoring BellSouth's on-going delivery of  
13 nondiscriminatory support that is necessary to facilitate competition in local  
14 markets. AT&T believes there are eight characteristics that are essential to an  
15 effective performance measurement plan. Those characteristics are:

- 16 a. A comprehensive set of comparative measurements that monitor all areas  
17 of support, (*i.e.*, pre-ordering, ordering, provisioning, maintenance &  
18 repair, and billing) without preference to any particular mode of market  
19 entry;
- 20 b. Performance measures and appropriate methodologies that are  
21 documented in detail so that clarity exists regarding what will be  
22 measured, how it will be measured, and the circumstances in which a

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<sup>1</sup> See Memorandum Opinion and Order, *In the Matter of Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a SouthWestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region InterLata Services in Texas*, 15 FCC Red. 18,354 ¶¶ 55-56 (F.C.C. June 30, 2000) (No. CC 00-65, FCC 00-238) ("*SWBT Texas Order*") (emphasis added).

- 1 particular event may be excluded from monitoring. Exclusions should  
2 also be tracked and reported;
- 3 c. Sufficient disaggregation of performance measurement results so that only  
4 the results for similar (or “like-to-like”) operational conditions are  
5 compared so the results will not mask discrimination;
- 6 d. Pre-specified and pro-competitive performance standards, including  
7 identification of reasonably analogous performance delivered by the ILEC  
8 to its own operations or, when analogous comparative standards are not  
9 readily identifiable, establishment of absolute minimum standards, *i.e.*  
10 benchmarks;
- 11 e. A sound quantitative methodology for comparing CLEC experiences to  
12 analogous incumbent support of its operations;
- 13 f. Initial and periodic audits of performance measurement processes and  
14 data;
- 15 g. Reporting and access to the raw data underlying BellSouth’s reported  
16 results; and
- 17 h. An effective remedy plan.

18 The testimony of Karen Kinard on behalf of MCI WorldCom discusses the  
19 performance standards and the appropriate disaggregation. My testimony outlines  
20 an appropriate remedy plan. Both the measures presented by Ms. Kinard and the  
21 remedy plan I present represent positions presented by a coalition of CLECs to  
22 state commissions throughout the BellSouth region.

1 **Q. MR. VARNER PROPOSES THAT THIS COMMISSION SHOULD RELY**  
2 **ON BELL SOUTH'S PROPOSED INTERIM SERVICE QUALITY**  
3 **MEASURES ("SQM") FOR PURPOSES OF THIS SECTION 271**  
4 **PROCEEDING. DOES AT&T AGREE WITH THAT PROPOSAL?**

5 A. No. BellSouth has told this Commission that it will be using the SQM ordered by  
6 the Georgia Commission to define the data that will be produced in BellSouth's  
7 performance reports for Kentucky. (See Direct Testimony of Alphonso J. Varner  
8 ("Varner"), May 18, 2001 at 3:22-4:3.) Although BellSouth suggests that its  
9 SQM has the imprimatur of the Georgia Commission, it does not. BellSouth has  
10 not appropriately implemented the Georgia Commission's Order. Therefore,  
11 BellSouth's Interim SQM is not completely reflective of the Georgia Order. As  
12 discussed in greater detail below, a review of the measures in BellSouth's Interim  
13 SQM reveals that BellSouth, without notice to CLECs or the approval of the  
14 Georgia Commission, has modified what it measures and what it reports. The  
15 measures BellSouth is reporting do not yet reflect what was ordered by the  
16 Georgia Commission. BellSouth has unilaterally decided what performance it  
17 will report to the Commission.

18  
19 **Q. CAN THIS COMMISSION PROPERLY GRANT SECTION 271**  
20 **AUTHORITY BASED ON DATA COLLECTED PURSUANT TO**  
21 **BELL SOUTH'S INTERIM SQM?**

22 A. No. Any determination made without data that is consistent with the performance  
23 standards this Commission may order would be improper because it is those  
24 standards, not the standards adopted by the Georgia Commission, by which  
25 BellSouth's performance will be judged going forward. Consequently, in order  
26 for the Commission to make a determination on BellSouth's performance that is  
27 credible in any respect, such determination must be made based upon  
28 performance standards adopted by this Commission.

1           Moreover, in order for the FCC to make an accurate determination as to  
2 whether BellSouth has satisfied all prerequisites to obtaining 271 approval, the  
3 FCC must conduct an evaluation based upon the performance standards that this  
4 Commission adopts to govern BellSouth's performance. Kentucky-specific  
5 performance standards and Kentucky-specific data are necessary to make a § 271  
6 determination. This Commission should not be duped into believing that the data  
7 BellSouth has provided is sufficient for this Commission to make a determination  
8 regarding BellSouth's request for § 271 relief.

9  
10 **Q. IN YOUR VIEW, WHAT IS NECESSARY TO DETERMINE WHETHER**  
11 **BELLSOUTH PROVIDES CLECS NONDISCRIMINATORY SUPPORT?**

12 A. Accurate data on adequate performance measures should be used to determine  
13 whether BellSouth provides nondiscriminatory access to its network and  
14 nondiscriminatory support. BellSouth's performance measures reporting,  
15 however, is a moving target. For example, BellSouth proposes its section 271  
16 authority be granted based on its proposed "Interim SQM" but seeks to rely on its  
17 "Permanent SQM," which is a completely different and inferior SQM to govern  
18 its performance post section 271 approval. (*See Varner* at 54:7-11.) BellSouth  
19 asks this Commission to rely on its compliance with orders from the Georgia  
20 Commission, but BellSouth is not complying with those orders. The Kentucky  
21 Commission should not consider BellSouth's request for § 271 relief until it has  
22 had the opportunity to fully consider and address the concerns of all parties,  
23 CLECS and BellSouth, regarding performance measures, standards, and remedies.  
24 Nor should the Commission consider BellSouth's request until BellSouth has  
25 implemented the SQM and remedy plan adopted by this Commission and can  
26 produce at least 3 months of associated data under that plan.  
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**II. THE KENTUCKY COMMISSION SHOULD NOT RELY ON BELLSOUTH'S PERFORMANCE REPORTS AND DATA PREPARED IN ACCORDANCE WITH BELLSOUTH'S INTERIM SQM TO EVALUATE BELLSOUTH'S SECTION 271 COMPLIANCE IN KENTUCKY**

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**Q. PLEASE EXPLAIN WHY AT&T BELIEVES BELLSOUTH'S MODIFICATIONS TO ITS INTERIM SQM ARE CONTRARY TO THE GEORGIA COMMISSION'S ORDER.**

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A. BellSouth's modifications are contrary to the Georgia Commission's January 12 Order<sup>2</sup> for a number of reasons.

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(a) First, in its January 12 Order, the Georgia Commission ordered BellSouth to incorporate into its SQM certain measures it had reported in its May 2000 SQM. Despite the Georgia Commission's Order, the measures in the April 2001 SQM are not all the same as the measures in the May 2000 SQM.

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(b) Second, the Georgia Commission ordered BellSouth to incorporate into its SQM certain additional measures sought by CLECs. Some of these measures do not appear in the April 2001 SQM as they appeared in the CLEC additional measures documents referenced by the Georgia Commission.

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(c) Third, the Georgia Commission specifically discussed what was to be included in certain measures in the SQM. Again, BellSouth has not always followed the specific direction of the Georgia Commission in its April 2001 SQM.

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**Q. WHY DO THESE MODIFICATIONS MATTER?**

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A. As a result of these unauthorized modifications to measures, and BellSouth's failure to provide reports, BellSouth has not complied with the Georgia Commission's January 12 Order for numerous pre-ordering, ordering, provisioning and maintenance measures. The modifications BellSouth has

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<sup>2</sup> See Order, *In re: Performance Measurements For Telecommunications Interconnection, Unbundling and Resale*, Georgia Public Service Commission, Docket No. 7892-U (January 12, 2001).

1 unilaterally implemented are important because they may allow BellSouth to hide  
2 performance deficiencies from the Kentucky Commission.

3 **A. BellSouth's Modifications To Measures It Had Proposed**

4 **Q. DID THE GEORGIA COMMISSION ADOPT SEVERAL MEASURES**  
5 **FROM BELLSOUTH'S MAY 2000 SQM?**

6 A. Yes, the Georgia Commission's January 12 Order adopted several measures from  
7 BellSouth's May 2000 SQM. (See Jan. 12 Order at 3-6.) A review of the most  
8 recent BellSouth SQM filed with the Georgia Commission however, reveals that  
9 BellSouth has changed some of those measures. These modifications have the  
10 potential to hide significant deficiencies in BellSouth's performance.

11

12 **Q. HOW HAS BELLSOUTH MODIFIED THE MAY 2000 SQM MEASURES**  
13 **THE GEORGIA COMMISSION ORDERED IT TO REPORT?**

14 A. One key area in which BellSouth has modified the May 2000 SQM measures is  
15 that it now excludes certain data from the measures calculations. Reported  
16 performance measures data must present an accurate picture of BellSouth's  
17 performance. When data is excluded from measures, or when particular events  
18 are not monitored at all, the measures do not reflect BellSouth's true performance  
19 and do not allow for adequate evaluation of BellSouth's performance. Excluding  
20 data is likely to hide deficiencies. Accordingly, data should not be excluded by  
21 BellSouth without prior Commission approval. Moreover, any excluded data  
22 should be tracked and monitored to ensure that performance deficiencies reflected  
23 in the excluded data are not hidden from the Commission.

24

1 **Q. DID THE GEORGIA COMMISSION APPROVE THE MODIFICATIONS**  
2 **MADE BY BELL SOUTH?**

3 A. No, BellSouth unilaterally decided to exclude certain data. The excluded data  
4 will not be available to CLECs or the Georgia Commission and will not be  
5 available to the Kentucky Commission.

6

7 **Q. PLEASE EXPLAIN MORE FULLY INSTANCES IN WHICH**  
8 **BELL SOUTH HAS EXCLUDED DATA WITHOUT THE GEORGIA**  
9 **COMMISSION'S APPROVAL.**

10 A. For two measures—% Missed Installation Appointments and Average  
11 Completion Interval—BellSouth modified the May 2000 SQM measure by  
12 excluding directory listing orders. As a result, these measures do not report  
13 whether BellSouth fills directory listing orders in a timely manner.

14 These directory listing orders were not excluded in the May 2000 SQM  
15 adopted by the Georgia Commission. Instead, BellSouth independently decided  
16 that CLECs and the Georgia Commission did not need to see whether BellSouth  
17 complies with its obligation to provide timely directory listings. BellSouth's  
18 performance on directory listing orders will be hidden from this Commission as  
19 well when BellSouth reports its data based on the Interim SQM.

20

21 **Q. WHY ARE DIRECTORY LISTINGS IMPORTANT TO CONSUMERS?**

22 A. Directory listings are important to consumers, especially businesses, because of  
23 the need to be accessible to their customers. Thus, BellSouth's failure to provide  
24 timely directory listings has a direct negative impact on consumers.

25

1 **Q. ARE THERE OTHER EXAMPLES WHERE BELL SOUTH HAS**  
2 **EXCLUDED DATA FROM ITS INTERIM SQM WITHOUT THE**  
3 **GEORGIA COMMISSION'S APPROVAL?**

4 A. Yes, there are. BellSouth also modified its Missed Appointment measure to  
5 include only the original missed appointment. This change allows BellSouth to  
6 miss all appointments set after the original missed appointment without a  
7 consequence to itself, but with severe consequences to the CLEC and its end-  
8 users. Appointments set after the original missed appointment were not omitted  
9 from this measure in the May 2000 SQM adopted by the Georgia Commission.  
10 Nonetheless, neither the Georgia Commission nor this Commission will see data  
11 on repeated missed appointments.

12

13 **Q. WHY IS THIS MEASURE IMPORTANT?**

14 A. The logic behind the need to measure and report this data is straightforward. A  
15 customer may be annoyed the first time an appointment is missed, but is likely to  
16 be furious at repeated failures to meet subsequent appointments. CLECs, not  
17 BellSouth, will suffer the consequences of those repeatedly missed appointments,  
18 but, because of the modifications made by BellSouth, this Commission will not  
19 even know subsequent missed appointments occurred.

20

21 **Q. ARE YOU AWARE OF ANY OTHER EXAMPLES OF EXCLUSIONS**  
22 **BELL SOUTH APPLIED TO ITS GEORGIA SQM?**

23 A. Yes. BellSouth also added additional exclusions to the Jeopardy Notice Interval  
24 measure. A jeopardy notice advises the CLEC that an order is in jeopardy. The  
25 CLEC can then advise its customer that the order will be delayed. BellSouth now  
26 excludes non-dispatch orders from the Jeopardy Notice Interval. Thus, BellSouth  
27 does not report the jeopardy notice interval for any orders for which it does not

1           require a technician to visit the customer's premises. These non-dispatch orders  
2           were not excluded in the May 2000 SQM adopted by the Georgia Commission.

3

4   **Q.   PLEASE EXPLAIN WHY THIS MEASURE IS IMPORTANT.**

5   A.   This measure is important because, regardless of whether a BellSouth technician  
6           is required to go to the customer's premises, CLEC customers need timely notice  
7           that their service will be delayed. Moreover, BellSouth has stated that, if an order  
8           is designated as nondispatch, and it is determined there is a facility delay, the  
9           order will be given a dispatch code. Even under BellSouth's rules, however, this  
10          manual change could be overlooked and result in the exclusion of data that should  
11          be reported. BellSouth's unilateral choice to specify non-dispatch as an exclusion  
12          can deny CLECs, the Commission, and consumers an accurate picture of  
13          BellSouth's performance.

14

15 **Q.   ARE THERE OTHER EXCLUSIONS?**

16 A.   Yes. BellSouth unilaterally decided to modify its May 2000 SQM to exclude  
17          rural orders from the Held Order Interval measures. Thus, BellSouth's  
18          performance measures reporting does not reveal whether customers in rural areas  
19          are receiving slower service due to their geographic location. There is no  
20          justification for consumers in rural areas to receive inferior service. These rural  
21          orders were not excluded in the May 2000 SQM adopted by the Georgia  
22          Commission.

23

24 **Q.   DID BELLSOUTH MAKE ANY OTHER CHANGES TO MEASURES IN**  
25 **THE MAY 2000 SQM THE GEORGIA COMMISSION ADOPTED?**

26 A.   Yes. BellSouth arbitrarily changed the denominator in the calculation specified in  
27          the May 2000 SQM for the LNP-Average Disconnect Timeliness measure. The

1 denominator in the May 2000 SQM specified the denominator as the “Total  
2 Number of Disconnect Service Orders Completed in Reporting Period.”  
3 BellSouth independently changed the denominator to “Total Number of  
4 Disconnected Numbers Completed in Reporting Period.” A single service order  
5 frequently has multiple numbers. Accordingly, with BellSouth’s modification  
6 any calculation of the interval is likely to be shorter. This measure is critical  
7 because failure to disconnect the customer in the BellSouth switch in an  
8 expeditious manner results in lost calls to CLEC customers. BellSouth did not  
9 obtain approval to modify this calculation.

10  
11 **Q. HOW DO THESE EXCLUSIONS AND CHANGES AFFECT THIS**  
12 **COMMISSION’S ABILITY TO RELY ON BELLSOUTH’S SELF-**  
13 **REPORTED DATA?**

14 A. Performance reporting that is not based on the entire set of data is inaccurate and  
15 is not useful to this Commission in monitoring BellSouth’s performance. Because  
16 they are not reported, inappropriate exclusions have the potential to mask true  
17 performance and to hide deficient performance. Exclusions are particularly  
18 troubling when the monitored party, in this instance BellSouth, unilaterally  
19 decides what the regulator will see.

20 **B. BellSouth Has Modified Measures From The CLEC-Proposed SQM**  
21 **Adopted By The Georgia Commission**

22 **Q. DID THE GEORGIA COMMISSION REQUIRE BELLSOUTH TO**  
23 **INCLUDE IN ITS SQM CERTAIN MEASUREMENTS PROPOSED BY**  
24 **CLECS?**

25 A. Yes. Among other measures, the Georgia Commission required BellSouth to add:  
26 Firm Order Confirmation (“FOC”) & Reject Response Completeness (“Rejects”),  
27 Percent Completion Attempts Without Notice or With Less Than 24 Hours  
28 Notice, Average Recovery Time for Coordinated Cuts, Recurring and Non-

1 recurring Charge Completeness, Average Database Update Interval, Percent  
2 Database Update Accuracy, NXX and LRN(s) Loaded by LERG Effective Date,  
3 Percentage of Quotes Provided for Authorized BFR/Special Request with X (10,  
4 30, 60) Days, and Percent of Requests Processed Within 30 Business Days.  
5

6 **Q. DID BELLSOUTH MODIFY ANY OF THESE MEASURES WITHOUT**  
7 **APPROVAL FROM THE GEORGIA COMMISSION?**

8 A. Yes. BellSouth unilaterally modified some of these measures without notice to  
9 CLECs or permission from the Georgia Commission. One way BellSouth has  
10 modified the CLEC-proposed SQMs adopted by the Georgia Commission is by  
11 unilaterally excluding data that should be used to calculate the measure.  
12 BellSouth did not notify CLECs that it was excluding this data and it did not  
13 obtain approval from the Georgia Commission for the exclusions. These  
14 exclusions conceal BellSouth's true performance and can hide performance  
15 deficiencies.  
16

17 **Q. PLEASE GIVE AN EXAMPLE OF THESE EXCULSIONS.**

18 A. Perhaps the most significant exclusion is BellSouth's decision to exclude non-  
19 business hours from the interval calculation for partially mechanized local service  
20 requests ("LSRs") for both the Firm Order Confirmation ("FOC") Timeliness  
21 measure and the Reject Interval measure. These are critical measures for CLECs.  
22 They reveal delays in processing orders—delays that likely will affect timely  
23 provisioning of the end-users' service—and require additional costs to CLECs who  
24 must expend resources to intervene and manage an untimely ordering process.  
25 Indeed, the FCC, in considering § 271 applications, recognizes that timely return  
26 of order confirmation notices "is a key consideration for assessing whether  
27 competitors are allowed a meaningful opportunity to compete." (Memorandum

1 Opinion and Order, *In the Matter of Joint Application by SBC Communications*  
2 *Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications*  
3 *Services, Inc. (d/b/a Southwestern Bell Long Distance) for Provision of*  
4 *InterLATA Services in Kansas and Oklahoma*, FCC 01-29 CC Docket No. 00-217  
5 ¶ 137 (rel. January 22, 2001) (“*SWBT Kansas Oklahoma Order*”).  
6

7 **Q. HOW HAS THIS EXCULSION AFFECTED BELLSOUTH'S**  
8 **PERFORMANCE DATA?**

9 A. In Georgia, BellSouth has shown an improvement in FOC timeliness from March  
10 to April, but not because its actual performance improved. BellSouth just  
11 changed the way it calculates the measure by excluding non-business hours from  
12 the calculation. Under the Georgia Commission's order, a partially mechanized  
13 LSR submitted on Monday at 1:00 p.m. should result in the CLEC receiving a  
14 FOC no later than 7:00 a.m. the next morning. With BellSouth's unauthorized  
15 exclusion, BellSouth would still be compliant if it returned the FOC by 11:00 a.m.  
16 on Wednesday, almost one and a half days later. Thus, BellSouth may appear to  
17 have improved its FOC timeliness, but not because it has improved its process.  
18 BellSouth's unilateral modification has changed the intent of the Georgia  
19 Commission's benchmark.

20  
21 **Q. IS THERE A DISTINCTION BETWEEN ORDERS THAT CLECS**  
22 **MANUALLY SUBMIT AND THOSE THAT ARE PARTIALLY**  
23 **MECHANIZED?**

24 A. Yes. CLECs submit manual orders to BellSouth via facsimile. These orders are  
25 called nonmechanized orders. BellSouth processes these orders manually.  
26 Partially mechanized orders are submitted electronically by CLECs to BellSouth,  
27 but fall out for manual processing for some reason.  
28



1 **Q. IS THERE A DISTINCTION IN THE FOC INTERVAL BETWEEN CLEC**  
2 **ORDERS SUBMITTED MANUALLY AND PARTIALLY MECHANIZED**  
3 **ORDERS?**

4 A. Yes. The standards in Georgia for FOCs and Rejects for partially mechanized  
5 LSRs are 85% in 18 hours (May 1, 2000) and 85% in 10 hours (August 1, 2001).  
6 For nonmechanized LSRs, the standards are: 85% in 36 hours for FOCs (May 1,  
7 2001) and 85% in 24 hours for Rejects (May 1, 2001).

8

9 **Q. HAS BELLSOUTH MADE ANY OTHER MODIFICATIONS?**

10 A. Yes. BellSouth also now excludes nonmechanized orders from the FOC and  
11 Reject Response Completeness measure. This measure addresses how often  
12 BellSouth returns either a FOC or a reject notice – the only appropriate responses  
13 – to a CLEC order. Without a FOC, CLECs are unable to provide their customers  
14 with a forecast of when service will be provisioned. This leads to customer  
15 frustration and potential cancelled orders. For the CLEC industry in December  
16 2000, nonmechanized orders comprised 12% of the total orders submitted to  
17 BellSouth region wide.<sup>3</sup> Evaluating only 88% of the orders submitted to  
18 BellSouth is not an evaluation of BellSouth's total performance and does not  
19 provide CLECs or the Kentucky Commission with the complete picture of  
20 BellSouth's performance in this key area.

21

22 **Q. DOES BELLSOUTH EXCLUDE DATA FROM OTHER TIMELINESS**  
23 **MEASURES?**

24 A. Yes. BellSouth excludes data relating to its timeliness in providing database  
25 updates for the Local Exchange Routing Guide ("LERG"). BellSouth added two  
26 exclusions that were not authorized by the Georgia Commission. One of the

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<sup>3</sup> See Testimony of Ronald M. Pate, Exhibit 45, North Carolina Utilities Commission, Docket P-55, Sub 1022, April 12, 2001 (attached as CLB-3).

1 exclusions inappropriately omits expedited orders from the calculation. Timely  
2 loading of NXX and LRN impacts whether CLECs can offer service to customers.  
3 There is no justification for excluding expedites from the performance calculation  
4 given that expedited orders are given a due date based on the expedited request.

5 After the Georgia Commission adopted this measure, BellSouth  
6 unilaterally decided to exclude data on its performance for expedited requests.  
7 This exclusion was not approved by the Georgia Commission and it is not  
8 appropriate. If BellSouth agrees to expedite a request, the CLEC relies on that  
9 commitment. If BellSouth fails to perform, the CLEC looks bad to its customers.  
10 These failures should be measured and reported to the Kentucky Commission.

11 BellSouth also unilaterally modified the Timeliness of Change  
12 Management Notices measure offered by the CLECs. This measure is important  
13 because it represents the amount of advanced notice received by CLECs for  
14 making critical and time-consuming software changes. BellSouth independently  
15 excluded changes to release data for reasons outside of BellSouth's control.  
16 These exclusions were not listed in the CLEC proposed SQM.

17 Moreover, this exclusion is a problem because it grants BellSouth  
18 considerable discretion to decide what is within its control. For example,  
19 BellSouth could determine that any Commission directed change is out of its  
20 control, even if the Commission granted BellSouth a lengthy window to make the  
21 change and gave adequate notice of the change to CLECs. BellSouth should not  
22 have unilateral authority to determine what is out of its control. This  
23 determination should be made by the industry as a whole.

1 **Q. DID THE GEORGIA COMMISSION IMPOSE OTHER REQUIREMENTS**  
2 **THAT BELL SOUTH HAS NOT FOLLOWED IN THE GEORGIA SQM?**

3 A. Yes. The Georgia Commission ordered BellSouth to report certain disaggregation  
4 levels. For example, the GPSC ordered BellSouth to disaggregate the FOC and  
5 Reject Response Completeness measures by order volume. (See Jan. 12 Order at  
6 8.) This would allow the Kentucky Commission to determine if BellSouth is less  
7 responsive in providing FOCs or Rejects for large versus small order volumes.

8

9 **Q. WHY IS RECEIVING DATA DISAGGREGATED BY VOLUME**  
10 **IMPORTANT TO CLECS?**

11 A. When BellSouth fails to return FOCs, customers may cancel orders because they  
12 cannot get a forecasted due date. Disaggregation of reported measures is an  
13 important issue for CLECs because without it, poor performance in specific areas  
14 may be masked. For example, failure to return a FOC for an LSR for a high  
15 volume order has a greater impact on a CLEC than the failure to return a FOC for  
16 an LSR for a single line. If the measure is not disaggregated by volume, poor  
17 responsiveness by BellSouth on the high volume, greater revenue LSRs could be  
18 concealed.

19 **C. BellSouth Failed To Comply With Specific Directions From The**  
20 **Georgia Commission In Its April 2001 SQM**

21 **Q. ARE THERE OTHER INSTANCES OF BELL SOUTH'S FAILURE TO**  
22 **ADHERE TO THE GEORGIA COMMISSION'S ORDER?**

23 A. Yes. For example, for the Reject Interval measure the Georgia Commission  
24 adopted BellSouth's SQM with amendments. However, BellSouth has further  
25 modified the measure by excluding certain data from the calculation. BellSouth  
26 excludes all LSRs that BellSouth classifies as "projects." BellSouth has not  
27 specifically defined "project" in this context, but its Project Manager Guidelines  
28 posted on its website, include all orders that BellSouth deems to be "complex"

1 and orders with as few as 5 DS1 lines and as few as 20 lines for even simple  
2 services. These types of orders are generally the most important CLEC accounts.  
3 Yet, BellSouth does not measure how it performs on those accounts.

4 BellSouth also altered the disaggregation for the Cooperative Acceptance  
5 Testing measure such that the performance is not reported on a state wide basis.  
6 This unauthorized change could mask BellSouth's true performance by  
7 aggregating results across the region, as opposed to reporting BellSouth's results  
8 in Kentucky.

9 **Q. CAN THIS COMMISSION GRANT BELLSOUTH SECTION 271**  
10 **AUTHORITY BASED UPON PERFORMANCE DATA THAT IS**  
11 **DEFINED BY BELLSOUTH'S "INTERIM SQM"?**

12 A. No. The bottom line is that BellSouth is seeking § 271 relief and asking this  
13 Commission to base performance on data pursuant to BellSouth's proposed  
14 Interim SQM which BellSouth states is compliant with the Georgia Order. The  
15 reality is BellSouth has not reported its performance in accordance with the  
16 Georgia Commission's Order. Now BellSouth wants to incorporate its  
17 noncompliant Georgia SQM which is referred to as the Interim SQM into  
18 Kentucky. This Commission should reject BellSouth's effort. BellSouth should  
19 be denied § 271 authority until it provides this Commission sufficient  
20 information, including CLEC-specific results, to judge whether BellSouth is in  
21 compliance with performance measures and standards adopted by this  
22 Commission.

23

1           **D.     BellSouth Has Failed To Make Raw Data Available As Ordered By**  
2           **The Georgia Commission**

3 **Q.     DOES AT&T HAVE ANY OTHER CONCERNS WITH THE**  
4 **PERFORMANCE MEASURES DATA BELLSOUTH IS REPORTING?**

5 A.     Yes. BellSouth does not make available to CLECs all of the raw data underlying  
6           its reports. CLECs and Commissions need raw data on BellSouth's performance  
7           so that BellSouth's self reported performance reports can be validated.<sup>4</sup>

8

9 **Q.     DOES BELLSOUTH PROVIDE ACCESS TO ANY RAW DATA?**

10 A.    BellSouth currently provides access to "raw data files" that it claims support its  
11         reported results. There are, however, several problems with that data. First, it is  
12         not truly raw data; it has already been subject to exclusions by BellSouth. The  
13         testimony of Sharon Norris, also filed today, contains a full discussion of this  
14         issue. Second, BellSouth does not provide the "raw data files" for all measures.  
15         Finally, AT&T's experience suggests that the "raw data files" BellSouth provides  
16         to CLECs are not the same raw data BellSouth uses to create reports.

17

18 **Q.     WHAT DATA DOES BELLSOUTH NOT PROVIDE?**

19 A.    BellSouth has not made any data available to CLECs underlying its reported  
20         results on measures for Operational Support Systems ("OSS") (Pre-ordering and  
21         Maintenance), collocation, billing, database update information, E911, change  
22         management or operation services and directory assistance. Further, data is not  
23         available for all provisioning, ordering, and maintenance/repair measures. Data  
24         were not currently available in April 2001 for the following:

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<sup>4</sup> The Georgia Commission's Orders require BellSouth to make raw data available. (*See, e.g.*, Georgia Public Service Commission, Order On Motions For Reconsideration and Clarification, Docket 7892-U (May 7, 2001).)

- 1                   •     Coordinated Customer Conversion – Average Recovery Time
- 2                   •     Speed of Answer in Ordering Center
- 3                   •     Cooperative Acceptance Testing
- 4                   •     Service Order Accuracy
- 5                   •     Average Answer Time – Repair Center
- 6                   •     Mean Time To Notify CLEC of Network Outage

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**Q.     WITHOUT THESE REPORTS, CAN THIS COMMISSION OR CLECS VALIDATE BELLSOUTH'S REPORTS?**

A.     No. Absent the data, there is no way to validate BellSouth's claims regarding its performance even though each of these measures is important to CLECs seeking to compete in the local market. What is even more significant for purposes of § 271, however, is that BellSouth simply refuses to provide the data from which it claims its performance reports are generated.

**Q.     CAN BELLSOUTH'S REPORTS BE VALIDATED USING DATA BELLSOUTH PROVIDES?**

A.     No. Indeed, when KCI has attempted to validate BellSouth's reports using the raw data, it cannot do so. Sharon Norris more fully discusses this issue in her testimony also filed today.

**Q.     ARE CLECS THE ONLY ONES HAVING PROBLEMS WITH BELLSOUTH'S DATA?**

A.     No. Even BellSouth apparently has problems with its own data. It is not unusual for BellSouth to retract a report and then repost it on the website with different results. The basis for these changes are not always revealed.

**Q.     IN YOUR VIEW, HAS BELLSOUTH SHOWN THAT ITS PERFORMANCE MEASURES DATA IS ACCURATE AND RELIABLE?**

A.     No. BellSouth has not demonstrated the accuracy of its performance measures reports. Instead, BellSouth's reluctance to produce an adequate raw data user

1 guide, combined with CLECs' inability to recreate some reports, suggests that the  
2 reports are not accurate. Because BellSouth's reports are not accurate, neither this  
3 Commission nor CLECs can rely on them.

4 **Q. BELLSOUTH HAS PROPOSED A PERMANENT SQM FOR ADOPTION**  
5 **BY THIS COMMISSION. SHOULD THE COMMISSION ADOPT**  
6 **BELLSOUTH'S PROPOSED PERMANENT SQM?**

7 A. No, the Commission should not adopt BellSouth's proposed Permanent SQM  
8 because it is even more inferior than its already inadequate Interim SQM.  
9 Curiously, BellSouth believes its Interim SQM is too detailed to use in Kentucky  
10 (*see Varner* at 61:25-62:1) yet, BellSouth has advocated that South Carolina rely  
11 on it (*see Direct Testimony of Alphonso J. Varner, Public Service Commission of*  
12 *South Carolina, Docket No. 2001-209-C (May 16, 2001) at 22:15*).

13

14 **Q. PLEASE BRIEFLY EXPLAIN WHY BELLSOUTH'S PROPOSED**  
15 **PERMANENT SQM IS INFERIOR TO ITS INTERIM SQM.**

16 A. BellSouth's proposed Permanent SQM omits certain measures such as Percent  
17 Completion Attempts Without Notice or <24 Hour Notice that are included in its  
18 Interim SQM. The proposed Permanent SQM also inappropriately aggregates 2  
19 wire analog loops with another unlike product. Moreover, the proposed  
20 Permanent SQM relies on reduced performance standards. For example, the  
21 reject interval in the Interim SQM is 97% in one hour whereas the proposed  
22 Permanent SQM only requires 95% in one hour.

23 Karen Kinard of MCI WorldCom more fully explains the differences  
24 between BellSouth's SQMs in her testimony also filed today.

1   **III.    THE IMPORTANCE OF AN EFFECTIVE REMEDY PLAN**

2

3   **Q.    WHAT ARE SELF-EXECUTING PERFORMANCE REMEDIES?**

4    A.    Remedies are monetary and non-monetary consequences assessed against an  
5           ILEC for failure to meet the established performance standards. Self-executing  
6           remedies are remedies that are automatically triggered upon an objective  
7           demonstration that the ILEC has failed to provide service at the level required.

8

9   **Q.    WHY IS THERE A NEED FOR A REMEDY PLAN?**

10   A.    A remedy plan must be in place to assure swift and appropriate action if a  
11           Regional Bell Operating Company (“RBOC”), like BellSouth, does not provide  
12           access to services and facilities in a nondiscriminatory manner as required by the  
13           Act.<sup>5</sup> Nondiscriminatory access to services and facilities must be evident in  
14           BellSouth’s performance in order for BellSouth to show that its markets are  
15           irreversibly open to competition.<sup>6</sup> CLECs believe that self-executing remedies  
16           are needed to enforce the Section 251 market opening provisions of the Act and  
17           are not solely designed to prevent Section 271 backsliding as BellSouth contends.  
18           In fact, both state commissions in the BellSouth region that have adopted self-  
19           executing remedies have ordered that remedies become effective to enforce  
20           BellSouth’s nondiscriminatory performance prior to BellSouth obtaining section  
21           271 approval. States such as Texas, Pennsylvania and Massachusetts also have

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<sup>5</sup> 47 U.S.C Section 251 c (2) c and (d).

<sup>6</sup> The FCC has confirmed that the RBOCs’ performance for CLECs will continue to be evaluated under the public interest standard in determining whether markets are irretrievably open to competition. *See In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communication Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Red. 3953 ¶ 8 (F.C.C. Dec 22, 1999) (No. CC 99-295, FCC 99-404) (“*Bell Atlantic New York Order*”) (reaffirmed that the adoption of a performance measures system that includes a “strong financial incentive for post-entry compliance with the section 271 checklist” as particularly important in opening local markets to competition consistent with the Telecommunications Act of 1996).



1 implemented remedies to enforce non-discriminatory and reasonable performance  
2 to be effective prior to 271 approvals.

3 One requirement of an effective performance measures methodology is a  
4 self-executing remedy plan. When results from the performance measures system  
5 demonstrate that BellSouth's provision of access to services and facilities falls  
6 below acceptable standards, the self-executing nature of a remedy plan removes  
7 unreasonable delays and expense associated with litigation that otherwise would  
8 inevitably ensue.

9  
10 **Q. WHY IS A REMEDY PLAN IMPORTANT TO LOCAL COMPETITION?**

11 A. A remedy plan is important to ensuring local competition because BellSouth is in  
12 the unique position of being the main supplier of services to CLECs and is, at the  
13 same time, the CLECs' main competitor. BellSouth is capable of seriously  
14 compromising a CLEC's ability to enter the local market and successfully serve  
15 its customers. BellSouth has much to gain by providing poor service to CLECs.  
16 Therefore, a remedy plan must be established that creates an economic incentive  
17 for BellSouth to cooperate and provide quality service, rather than to discriminate  
18 against competing providers

19 Developing appropriate performance standards is only the first step to  
20 ensuring that CLECs receive parity service from BellSouth as required by the  
21 Act.<sup>7</sup> If there is no incentive for BellSouth to abide by the established  
22 performance standards, then those standards are useless. Remedies provide  
23 BellSouth with compliance incentive. Remedies must be significant enough to  
24 ensure that it is more beneficial for BellSouth to comply with the performance

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<sup>7</sup> The performance standards this Commission should adopt are discussed in the testimony of Karen Kinard of MCI WorldCom also filed today.

1 standards than to pay the remedies for non-compliance. Otherwise, BellSouth  
2 would likely view insufficient remedies as merely the cost of doing business.  
3 Without significant remedy provisions, competition will not develop and  
4 BellSouth will continue to monopolize the local telephone market in Kentucky.  
5

6 **Q. WHAT PRINCIPLES ARE THE FOUNDATION OF AN EFFECTIVE**  
7 **REMEDY PLAN?**

8 A. Several principles should guide the analysis of whether a remedy plan is  
9 sufficient. Those principles are:

- 10 1. Remedies must be great enough to motivate BellSouth to meet its  
11 obligations under the Act to provide nondiscriminatory access to services  
12 and facilities. AT&T's proposed remedy plan potentially generates  
13 remedies for all measures. Under this plan, the more harm done to  
14 competition, the greater the remedy payment. AT&T's proposed remedy  
15 plan is flexible and can grow along with competition. For example, Tier II  
16 remedies decrease as CLEC market penetration levels increase. AT&T's  
17 proposed remedy plan is also "scalable" according to the size of the  
18 market in the state.
- 19 2. Remedies generated under the enforcement mechanisms should not be  
20 allowed to become excessive. The plan must foster competition, not  
21 create an economic incentive for CLECs to receive deficient performance.
- 22 3. The structure of a remedy plan should be based on an audited system with  
23 verifiable data and processes. A recognized neutral party should complete  
24 a thorough audit of the performance measures using a pre-approved,  
25 disclosed, and industry-reviewed methodology. For example, there should  
26 be a validation of BellSouth's processes and systems used for data  
27 collection, reporting, storage and retrieval. An effective plan should

- 1 provide reasonable assurances that the reported data is accurate. (*See Bell*  
2 *Atlantic New York Order* ¶ 433.)
- 3 4. Remedies must be self-executing – no delay, no expense to the harmed  
4 CLEC, no litigation required to invoke remedies. The FCC has stated that  
5 an effective enforcement plan shall “have a self-executing mechanism that  
6 does not leave the door open unreasonably to litigation and appeal.” (*Id.*  
7 ¶ 433.) CLECs should not be required to undergo costly and time-  
8 consuming litigation when the performance measurements system shows  
9 discrimination.
- 10 5. Remedies must escalate according to the duration and magnitude of poor  
11 performance.
- 12 6. The remedy plan should be structured so that it is simple to implement and  
13 administer. This is especially important in light of the complexity of  
14 BellSouth’s proposal.
- 15 7. Interest must accumulate on monetary payments that are not paid in  
16 accordance with the remedies plan.

17

18 **IV. AT&T’S PROPOSED REMEDY PLAN**

19 **Q. DOES AT&T HAVE A PROPOSAL FOR A REMEDY PLAN IN**  
20 **KENTUCKY?**

- 21 A. Yes. The plan AT&T is proposing is the plan the CLEC coalition developed to  
22 present to all states in BellSouth’s region. This proposed plan, Performance  
23 Incentive Plan, Version 2.0, is attached to my testimony as Exhibit CLB-1. If this  
24 Commission adopts AT&T’s proposed remedy plan, it may be assured that a  
25 sound remedy plan is in place that protects the end user – the Kentucky consumer.  
26 AT&T’s proposed remedy plan will also foster the rapid and sustainable  
27 development of a competitive local telecommunications market in Kentucky.

1 **Q. DESCRIBE THE STRUCTURE OF AT&T'S PROPOSED REMEDY**  
2 **PLAN.**

3 A. Generally, AT&T's proposed remedy plan ("AT&T's plan") is structured to  
4 evaluate (1) the quality of support delivered to each individual CLEC as  
5 compared to BellSouth's own retail operations, and (2) the quality of service  
6 BellSouth delivers to the CLEC industry as a whole when compared to its own  
7 retail operations. In the first scenario, liquidated damages would be payable to  
8 the affected CLEC; in the second scenario, regulating fines would be payable to  
9 the governmental agency to protect the public interest.

10 In AT&T's plan, BellSouth's service to CLECs and to its own retail  
11 operations is gauged using a comprehensive set of performance measurements  
12 referred to as "sub-measures." These sub-measures cover the full panoply of  
13 BellSouth's activities on which CLECs must rely in order to deliver retail service  
14 offerings in the local marketplace. Each sub-measure is designed to identify and  
15 measure a key area of activity that affects CLECs and their customers and,  
16 consequently, the development of competition in Kentucky's local  
17 telecommunications market. In order for this Commission and CLECs to monitor  
18 BellSouth's performance for a particular sub-measure and impose remedies for  
19 discriminatory performance, the remedy plan must first set performance standards  
20 that will be used to determine whether BellSouth's performance is compliant.

21 The performance standard for each sub-measure included in AT&T's plan  
22 is divided into two categories: retail analogs and benchmarks. Retail analogs are  
23 used for those measures for which the performance standard requires BellSouth to  
24 provide parity performance -- that is, BellSouth must provide CLECs service at  
25 the same level of its own retail operations. In order to make a parity  
26 determination, a retail analog is established for each sub-measure being  
27 compared. A direct comparison is then made between BellSouth's performance

1 data for its retail operations and a CLEC's performance data. A statistical  
2 methodology is then used to determine if any observed differences between the  
3 data sets are significant.

4 AT&T's plan advocates the use of the modified Z-statistic to determine  
5 whether BellSouth's performance is in compliance with the analog performance  
6 standard set for a particular sub-measure. Dr. Bell's testimony, also filed today,  
7 addresses the details of the statistical methodology in the Performance Incentive  
8 Plan.

9 No statistical test is needed or is applied to measures using a benchmark as  
10 the performance standard. Benchmarks require BellSouth to meet an absolute  
11 level of required performance. For example, if a benchmark for a particular order  
12 requires BellSouth to complete ninety-five percent (95%) of the orders within  
13 three (3) days, but BellSouth completed only seventy percent (70%) of the orders  
14 for a given month in three (3) days only, BellSouth's performance would not be  
15 compliant.

16  
17 **Q. HOW ARE REMEDIES ASSESSED?**

18 A. Remedy payments for discriminatory performance by BellSouth or any other  
19 ILEC operate on two tiers. Tier I addresses the remedies for non-compliant  
20 performance delivered to an individual CLEC. Tier I remedies are paid to the  
21 individual CLECs for the harm suffered by the CLEC and its customers. These  
22 remedies are in the nature of liquidated damages. Under Tier I of AT&T's plan,  
23 remedies are only generated for an individual CLEC if that CLEC's business  
24 activity touches upon a particular sub-measure. For example, a CLEC that does  
25 not sell port and loop combinations ("UNE P") would not have compliance  
26 determinations made for the sub-measure Missed Installation Appointment –

1           UNE P. This is attributable to the fact that this particular CLEC did not install  
2 any UNE-P service for the month.

3           Tier II addresses the remedies for non-compliant performance delivered to  
4 the CLEC industry as a whole. Tier II remedies are paid to the state for harm  
5 done to the competitive market and Kentucky consumers as a whole.  
6

7   **Q.    ARE ALL PROPOSED MEASURES INCLUDED IN AT&T'S PROPOSED**  
8   **REMEDY PLAN?**

9   A.    Yes. The measures proposed in AT&T's plan (including disaggregation,  
10 benchmarks and retail analogs) are set forth in Karen Kinard's testimony. All  
11 sub-measures proposed by AT&T are included in the determination of remedy  
12 payments, because those sub-measures monitor key areas of CLEC and BellSouth  
13 activity.

14           Self-enforcing consequences must be based upon an underlying set of  
15 performance measurements that cover the full panoply of ILEC activities upon  
16 which CLECs must rely to deliver their own retail service offerings. No measures  
17 are excluded in AT&T's plan because each measures an activity that affects  
18 customers and ultimately affects the openness of the market. Every measure is  
19 designed to identify key areas of activity that are necessary for the development  
20 of competition and the opening of BellSouth's local market. When discussing the  
21 remedy plan, I refer to these disaggregated measures as "sub-measures." In  
22 practice, however, not all sub-measures generate remedies. If there is no activity  
23 in a given sub-measure then no remedies would apply for that sub-measure.  
24

1 **Q. SHOULD REMEDIES APPLY TO PERFORMANCE MEASURES THAT**  
2 **ARE SHOWN TO BE DUPLICATIVE OF OR “CORRELATED” WITH**  
3 **OTHER MEASURES?**

4 A. Remedies should be carefully applied to all measures. The decision whether or  
5 not to apply a remedy depends on the strength of the correlation between the  
6 measures. Because a measure appears to be duplicative or correlated does not  
7 mean it is. An analysis of the data is required to make a determination. If a  
8 thorough and appropriate data investigation discloses that two measures are  
9 highly correlated, then they are, in effect, measuring the same thing. In that case,  
10 applying penalties to each could double the consequences. Thus, remedies are not  
11 generally appropriate for both measures. If the correlation is determined to be  
12 small to moderate, then the metrics are not measuring the same thing and  
13 remedies should apply.

14

15 **Q. SHOULD REMEDIES APPLY TO MEASURES THAT REFLECT**  
16 **MANUAL AND PARTIALLY MECHANIZED PROCESSING?**

17 A. Yes. Discriminatory performance can occur no matter what the level of  
18 mechanization. Manual orders can represent key aspects of a CLEC’s business.  
19 Moreover, in some cases like branded OS/DA, CLECs have no choice but to use  
20 nonmechanized ordering. BellSouth should not be able to discriminate against a  
21 CLEC who uses nonmechanized ordering. Accordingly, remedies should be  
22 applied to sub-measures that report on manual and partially mechanized order  
23 processing.

24

25 **Q. WHAT IS DISAGGREGATION?**

26 A. Disaggregation is the process of breaking down performance data into sufficiently  
27 specific categories or dimensions so that like-to-like comparisons can be made.  
28 For example, BellSouth’s retail offerings contain a number of varying products.

1 In order to compare BellSouth's performance for its own retail customers to its  
2 performance for CLECs, it is necessary for UNE analog loop products to be  
3 compared separately with BellSouth's retail Plain Old Telephone Service  
4 ("POTS") product.  
5

6 **Q. WHY IS DISSAGGREGATION CRITICAL TO AN EFFECTIVE REMEDY**  
7 **PLAN?**

8 A. Disaggregation is critical to an effective remedy plan because it prevents poor  
9 performance in one area (such as xDSL) from being obscured by being combined  
10 with dissimilar performance data. For example, comparing central office  
11 provisioning work to field dispatch provisioning work is likely to mask  
12 discriminatory performance. Sufficient disaggregation is absolutely essential for  
13 accurate comparison of results to expected performance. This is true regardless of  
14 whether a retail analog or a benchmark serves as the performance standard.  
15

16 **Q. WHAT DISSAGGREGATION IS PROPOSED BY AT&T?**

17 A. Disaggregation should be required by interface type, pre-order query type,  
18 product, volume category, work activity type, trouble type, trunk design and type  
19 (for trunk blockage measurements), maintenance and repair query type, and  
20 collocation category. The required disaggregation is included in Karen Kinard's  
21 testimony.  
22

23 **Q. WHAT IS THE APPROPRIATE LEVEL OF DISSAGGREGATION TO**  
24 **USE IN DETERMINING THE AMOUNT OF REMEDY PAYMENTS?**

25 A. Disaggregation should proceed to a level where like-to-like comparisons can be  
26 made. There are analytical procedures that allow factual conclusions to be made  
27 regarding how much disaggregation is sufficient. Inadequate disaggregation of



1 results means that not all key factors driving differences in performance results  
2 have been identified. This injects needless variability into the computed results.  
3 Therefore, disaggregation must be sufficient to ensure accurate comparison of  
4 results to expected performance. Remedies and compliance should be determined  
5 at the same level of disaggregation.  
6

7 **Q. SHOULD THE PERFORMANCE STANDARDS APPLICABLE TO**  
8 **AT&T'S PROPOSED REMEDY PLAN AND THOSE APPLICABLE TO**  
9 **MEASURE NON-DISCRIMINATORY PERFORMANCE IN THE**  
10 **PERFORMANCE MEASUREMENT PLAN DIFFER?**

11 A. No. Basing remedies and reporting performance on different performance  
12 standards would be both confusing and meaningless.  
13

14 **Q. WHEN IS THE STATISTICAL METHODOLOGY APPLIED?**

15 A. The statistical methodology is applied only to those parity measures for which  
16 there are retail analogs. Parity measures that compare the performance between  
17 what BellSouth provides to its own retail operations and the performance it  
18 provides to CLECs apply a statistical methodology for making parity  
19 determinations. Statistical tests are neither necessary nor appropriate for  
20 benchmark measures. BellSouth either passes or fails (with degrees of severity)  
21 on those measures according to the benchmark level and proportion that is in  
22 place.  
23

24 **Q. HOW ARE REMEDY PAYMENTS DETERMINED UNDER AT&T'S**  
25 **PROPOSED REMEDY PLAN?**

26 A. AT&T's plan proposes a two-tier structure. For parity sub-measures, Tier 1  
27 payments are paid to individual CLECs if the difference in a given month  
28 between BellSouth's performance for itself or affiliates and that which it provides

1 to a particular CLEC exceeds the gap specified in the plan. Tier I has three  
 2 categories of violations, depending upon the size of the gap between the  
 3 performance BellSouth provides for itself, or its affiliates, and the performance it  
 4 provides to CLECs. Once a sub-measure failure is identified, the calculated  
 5 remedy should be a function of the severity of the failure as measured by the  
 6 magnitude of the modified Z-statistic. The form of consequences as a function of  
 7 severity is most simply accomplished by the use of a quadratic function of the  
 8 measured modified z score to the balancing critical value.

9 TABLE 1<sup>8</sup>

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

10 When a benchmark serves as the performance standard, the measurement  
 11 establishes a performance failure directly and assesses the degree to which  
 12 performance departs from the standard. For benchmark measures, the  
 13 performance is expressed as “B% meet or exceed the benchmark” where B% is a  
 14 proportion figure set less than 100%. Accordingly, a performance failure should  
 15 be declared if the calculated performance is not equal to or greater than the “B%”  
 16 level. As with measurements that are judged against a parity standard, those  
 17 compared to a benchmark standard should be subject to additional consequences  
 18 as the performance becomes increasingly worse compared to the benchmark as  
 19 specified below:

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<sup>8</sup> 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

TABLE 2<sup>9</sup>

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

2 **Q. HOW ARE TIER I PAYMENTS CALCULATED FOR BENCHMARK**  
3 **MEASURES WHEN MEASUREMENT DATA SETS ARE SMALL?**

4 A. Benchmark measures are “pass/fail”. However, the AT&T plan recognizes that in  
5 some instances the number of transactions (e.g., in a particular geographic area)  
6 may be small. In those situations, it could be more difficult for BellSouth to meet  
7 the benchmark. For example, the benchmark for a particular sub-measure  
8 requires BellSouth to perform a function in two hours, 95% of the time. Due to  
9 disaggregation, there could be a situation where there are only four transactions  
10 that can be used to determine BellSouth’s performance. With only four  
11 transactions, BellSouth fails this benchmark if it misses the measure only one  
12 time. AT&T’s proposed remedy plan allows for adjustments to be made when the  
13 size of the data set is very small, such as in the example above. The Benchmark  
14 Adjustment Table is provided in Exhibit CLB-2.

15

16 **Q. SHOULD ADDITIONAL REMEDIES APPLY FOR CHRONIC**  
17 **FAILURES?**

18 A. Yes. Chronic Tier I violations should incur additional remedies. AT&T’s plan  
19 calls for a \$25,000 payment to CLECs for “chronic” or recurring performance  
20 failures. The \$25,000 payment is assessed beginning in the third month in which

<sup>9</sup> 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.

1 a particular sub-measure is missed. The \$25,000 monthly payment continues for  
 2 every month until the performance for that sub-measure returns to a “compliant”  
 3 level. One month of compliant performance resets the clock. For Tier I  
 4 violations, chronic failures are remedied at the same rate as severe violations.

5  
 6 **Q. HOW DOES AT&T’S REMEDY PLAN TREAT INDUSTRY AFFECTING**  
 7 **PERFORMANCE FAILURES?**

8 A. When poor performance goes beyond affecting a particular CLEC and affects the  
 9 CLEC community and competition as a whole, Tier 2 of the remedy plan is  
 10 invoked. Tier 2 payments are made when, for a particular sub-measure, the  
 11 aggregated performance results for all CLECs fall below the designated level. No  
 12 measures are excluded from the Tier 2 evaluation.

13 In Tier 2, there are two levels of severity for non-complaint performance  
 14 for parity and benchmark sub-measures: Market Impacting and Market  
 15 Constraining. Table 3 below describes when a Tier 2 payment is triggered for  
 16 parity sub-measures (those with a retail analog).

17 TABLE 3<sup>10</sup>

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

18  
 19  
<sup>10</sup> 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                   The following table describes when a Tier 2 payment is triggered for  
 2                   benchmark sub-measures:

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

3                   All violations are counted. Tier 2 payments are paid directly into a state-  
 4                   designated fund in which BellSouth has no direct or indirect interest, for example,  
 5                   the State Treasury.  
 6

7   **Q. IS THE TIER II REMEDY AMOUNT BASED ON CLEC MARKET**  
 8   **PENETRATION LEVELS?**

9   A. Yes. As competition becomes established, the size of the applicable Tier II  
 10   consequence is reduced to zero if the ILEC no longer provides a majority of the  
 11   local lines to the CLECs in its serving area. The factor “n,” specified in the  
 12   Tier II remedy calculation, corresponds to the number of CLEC-served lines in  
 13   the state of Kentucky.  
 14

15   **Q. WHAT IS THE “n” FACTOR USED IN THE TIER II REMEDY**  
 16   **CALCULATION FOR BENCHMARK AND PARITY MEASURES?**

17   A. The factor “n” in the Tier II remedy calculation is a multiplier. The value of “n”  
 18   depends upon the openness of the local market to competition. In other words,  
 19   “n” is based on CLEC market penetration levels. The value of “n” decreases as  
 20   the number of CLEC served lines increases. This results in Tier II payments  
 21   decreasing as the CLEC market penetration increases. The following table  
 22   illustrates how the market penetration adjustment is determined:

1

Tier II – Determining “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

2 **Q. ARE SPECIAL ADJUSTMENTS FOR BENCHMARK MEASURES WITH**  
3 **SMALL SAMPLE SIZES APPLICABLE FOR TIER II CALCULATIONS?**

4 A. Yes. The same business rules for benchmark measures with small sample sizes  
5 apply for Tier II calculations.

6 **Q. WHAT IS AN ABSOLUTE CAP?**

7 A. An absolute cap represents a limit on BellSouth’s liability for providing non-  
8 compliant service to CLECs.

9

10 **Q. IS AN ABSOLUTE CAP ACCEPTABLE?**

11 A. No. An absolute cap is unacceptable because it provides ILECs with the means to  
12 evaluate the cost of market share retention through the delivery of non-compliant  
13 performance. Moreover, absolute caps send the signal that once the ILEC’s  
14 performance deteriorates to a particular level, i.e., reaching the absolute cap, then  
15 further deterioration in performance is irrelevant. Absolute caps also create  
16 complexity and ambiguity regarding how legitimate remedies should be  
17 apportioned among the CLECs, and between the CLECs and the State.

18

1 **Q. DOES AT&T'S PROPOSED REMEDY PLAN INCLUDE AN ABSOLUTE**  
2 **CAP?**

3 A. No. AT&T does not support an absolute cap on remedy payments. However, a  
4 procedural cap may be appropriate. A procedural cap establishes a preset level of  
5 remedies that when reached, grants ILECs the ability to seek regulatory review of  
6 additional remedy amounts due. The procedural cap does not automatically  
7 exempt an ILEC from liability for a violation. Procedural caps, therefore, avoid  
8 both problems of absolute caps: they do not provide ILECs with the opportunity  
9 to evaluate the "cost" of retaining share through non-compliance and they do not  
10 exempt an ILEC from the consequences for unchecked performance deterioration.

11

12 **Q. IF THIS COMMISSION ADOPTS A PROCEDURAL CAP, ARE ILECS**  
13 **STILL LIABLE FOR TIER I PAYMENTS?**

14 A. Yes. If a procedural cap is adopted, it should not stop Tier 1 payments. Tier 1  
15 payments are intended to at least partially compensate CLECs for the harm  
16 incurred because of the performance failure. Instituting a procedural cap should  
17 not eliminate Tier 1 payments.

18

19 **Q. WHAT WOULD HAPPEN ONCE THE PROCEDURAL CAP IS**  
20 **REACHED?**

21 A. If the procedural cap is reached, BellSouth should continue to make Tier 2  
22 payments into an interest-bearing registry or escrow account that earns a  
23 minimum interest rate as approved by the Commission. BellSouth would have  
24 the burden of showing that the amount due for poor performance to the CLECs in  
25 aggregate is not warranted. The Commission would then decide whether, and to  
26 what extent, remedies in excess of the procedural cap should be paid out. The  
27 procedural cap needs to be set sufficiently high to avoid negating the benefits of  
28 self-executing remedies.

1

2 **Q. ARE THERE OTHER PERFORMANCE FAILURES TO WHICH AT&T'S**  
3 **PROPOSED REMEDY PLAN APPLIES?**

4 A. Yes. AT&T's proposed remedy plan calls for payments to be made when  
5 BellSouth posts performance data and reports late. If performance data and  
6 associated reports are not available to CLECs by the due date, then the ILEC  
7 should be liable for payments of \$5,000 for every day past the due date that the  
8 reports and data are not available. The ILEC's liability should be determined  
9 based on the latest report delivered to a CLEC. Because this type of violation  
10 affects all CLECs, all remedy payments would be made to the state fund I  
11 described earlier.

12 If performance data and reports are incomplete, or if previously reported  
13 data and reports are inaccurate, then the ILEC should be liable for payments of  
14 \$1,000 to a state fund for every day past the original due date the reports remain  
15 uncorrected.

16

17 **Q. DO CLECS SUPPORT OTHER REMEDIES IN ADDITION TO TIER 1**  
18 **AND TIER 2 PAYMENTS?**

19 A. Yes. CLECs reserve their right to seek individual legal and regulatory remedies  
20 for harm they incur due to BellSouth's performance. This Commission also  
21 retains its authority to monitor BellSouth's performance and initiate proceedings  
22 to investigate the status of competition within this state. In addition, the FCC  
23 retains its ability under the Act to suspend or revoke authority that BellSouth may  
24 obtain in the future to provide in-region, interLATA services.

25



1 **Q. SHOULD A REVIEW PROCESS BE INSTITUTED TO CONSIDER**  
2 **REVISIONS TO THE PERFORMANCE ASSESSMENT PLAN ADOPTED**  
3 **BY THIS COMMISSION?**

4 A. Yes. A collaborative work group, including CLECs, the Kentucky Public Service  
5 Commission and BellSouth, should be established to review the Performance  
6 Assessment Plan for additions, deletions and modifications. A review cycle  
7 should begin six months after the date of an KPSC order setting a plan. BellSouth  
8 and CLECs should file any proposed revisions to the Performance Assessment  
9 Plan one month prior to the beginning of each review period. BellSouth may be  
10 ordered by the Kentucky Public Service Commission to modify or amend any  
11 aspect of the plan including measures and remedies. Nothing should preclude  
12 either party from participating in any proceeding or from advocating  
13 modifications. In the event a dispute arises regarding the ordered modifications,  
14 the parties will refer the dispute to the KPSC.

15

16 **Q. SHOULD THIS COMMISSION ADOPT AT&T'S PERFORMANCE**  
17 **INCENTIVE PLAN, VERSION 2.0?**

18 A. Yes, I urge this Commission to order the remedy plan, namely Performance  
19 Incentive Plan ("PIP") Version 2.0, proposed by AT&T. The PIP should be  
20 adopted for the following reasons:

- 21 1. PIP is a comprehensive plan crafted on sound principles.
- 22 2. The multi-tiered structure serves to motivate BellSouth to provide  
23 compliant service by escalating consequences for continued violations.
- 24 3. PIP includes all measures to properly reflect all parts of customer  
25 experiences.
- 26 4. Consequences under the plan escalate with increased level of severity of  
27 violation.

- 1           5.    PIP provides for two separate evaluations: (1) the quality of support  
2           delivered to each individual CLEC, and (2) the quality of support  
3           delivered to the CLEC industry in the aggregate.
- 4           6.    PIP includes consequences payable to individual CLECs and  
5           consequences payable to a public fund identified by this Commission.
- 6           7.    PIP includes a sound statistical methodology to make performance  
7           determinations when measures have a retail analog.
- 8           8.    Benchmarks are established for measures that do not have retail analogs.
- 9           9.    The Tier II consequence calculation takes CLEC market penetration levels  
10          into consideration.
- 11          10.   The consequences are applied at the sub-measure level.

12                    By adopting AT&T's proposed Performance Incentive Plan Version 2.0,  
13                    this Commission can be assured that there is a sound remedy plan in place to  
14                    protect the end user – the Kentucky consumer. This remedy plan will also assist  
15                    in the rapid and sustainable development of a competitive local  
16                    telecommunications market in Kentucky.

17   **V.    BELLSOUTH'S SELF-EFFECTUATING ENFORCEMENT MECHANISM**  
18   **IS INADEQUATE AND SHOULD NOT BE ADOPTED BY THIS**  
19   **COMMISSION**

20   **Q.    HAS THE FEDERAL COMMUNICATIONS COMMISSION PROVIDED**  
21   **ANY GUIDANCE FOR DETERMINING IF AN ENFORCEMENT PLAN**  
22   **IS ADEQUATE?**

23   **A.    Yes. The FCC has identified the following key requirements that should be a part**  
24   **of an effective enforcement plan:<sup>11</sup> (1) a reasonable structure that is designed to**  
25   **detect and sanction poor performance when it occurs; (2) potential liability that**

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<sup>11</sup> See *Bell Atlantic New York Order* ¶ 433.

1 provides a meaningful and significant incentive to the ILEC to comply with the  
2 designated performance standards; (3) clearly articulated, predetermined measures  
3 and standards, which encompass a comprehensive range of carrier-to-carrier  
4 performance; (4) a self-executing mechanism that does not leave the door open  
5 unreasonably to litigation and appeal; and (5) reasonable assurances that the  
6 reported data is accurate.

7

8 **Q. DOES BELLSOUTH'S SEEM COMPLY WITH EACH OF THE KEY**  
9 **REQUIREMENTS SET FORTH BY THE FCC?**

10 A. No. BellSouth's SEEM does not meet each of the key FCC requirements. The  
11 plan proposed by AT&T does.

12

13 **Q. DOES SEEM ADEQUATELY DETECT AND SANCTION POOR**  
14 **PERFORMANCE?**

15 A. No. An effective enforcement plan should have a reasonable structure that is  
16 designed to detect and sanction poor performance when it occurs. However, the  
17 structure of BellSouth's SEEM can allow non-compliant performance to be  
18 masked and not to be subject to remedies. First, SEEM includes an inappropriate  
19 remedy calculation methodology and an absolute cap that limits BellSouth's  
20 potential liability resulting in reduced incentive for BellSouth to comply with  
21 designated performance standards. Second, the performance measures included  
22 in SEEM are inadequate and therefore can hinder the ability to detect  
23 discriminatory performance by BellSouth. Furthermore, the level of  
24 disaggregation is insufficient and many of the retail analogs are inappropriate.

25

1 Q. DOES BELLSOUTH'S SEEM PROVIDE FOR POTENTIAL LIABILITY  
2 THAT IS A MEANINGFUL AND SIGNIFICANT INCENTIVE FOR  
3 BELLSOUTH TO COMPLY WITH DESIGNATED PERFORMANCE  
4 STANDARDS?

5 A. No, BellSouth's SEEM does not satisfy this requirement because remedies accrue  
6 on a transaction basis.

7

8 Q. IF SEEM DETERMINES REMEDIES BASED UPON TRANSACTION  
9 VOLUMES, CAN SEEM PROVIDE A MEANINGFUL AND  
10 SIGNIFICANT INCENTIVE FOR BELLSOUTH TO COMPLY WITH  
11 REQUIRED PERFORMANCE STANDARDS?

12 A. No. Accruing remedies on a transaction basis as set forth in SEEM minimizes  
13 BellSouth's liability because a significant number of CLECs are currently at an  
14 embryonic level of activity. As BellSouth has acknowledged in prior  
15 proceedings, CLEC transaction volumes will likely be very small. Consequently,  
16 a transaction based plan will not generate sufficient remedies to motivate  
17 compliant behavior by BellSouth. Therefore, as proposed by AT&T, remedies  
18 should accrue on a per measure basis.<sup>12</sup>

19 In a measures based plan, remedies accrue at the level where the  
20 comparisons are made (i.e., at the measure/sub-measure level). Thus, the remedy  
21 amount is a direct function of the departure of BellSouth's performance from  
22 parity. The measure-based plan generates more remedies as the severity of the  
23 discriminatory performance increases. Consequently, at a time when CLECs are  
24 struggling to get into market, a measures based plan rather than SEEM would be  
25 more effective in motivating BellSouth to provide compliant performance. If the  
26 remedy plan consequences are inadequate, then discriminatory support from  
27 BellSouth could suppress a CLEC's market entry.

---

<sup>12</sup> The New York plan that was approved by the FCC does accrue remedies on a per measure basis.

1 Contrary to Mr. Varner's testimony, BellSouth's SEEM is not designed to  
2 generate significant payments by BellSouth when discriminatory performance  
3 affecting a CLEC's ability to compete is detected. (See *Varner* at 82:14-16.)  
4 Moreover, Mr. Varner's assertion that "the more transactions where disparate  
5 performance is detected, the higher the penalty" is also not always accurate. (See  
6 *Varner* at 83:12-15.) The fact of the matter is that under SEEM, BellSouth can  
7 pay small, if any amounts in remedies.

8

9 **Q. ARE THERE OTHER REASONS THAT BELL SOUTH'S SEEM DOES**  
10 **NOT PROVIDE FOR POTENTIAL LIABILITY THAT IS A**  
11 **MEANINGFUL AND SIGNIFICANT INCENTIVE FOR BELL SOUTH TO**  
12 **COMPLY WITH DESIGNATED PERFORMANCE STANDARDS?**

13 **A.** Yes. Under the remedy calculation methodology used in SEEM, even though  
14 BellSouth's plan is transaction based, BellSouth does not pay remedies on all  
15 transactions when a violation of the performance standard occurs. Through the  
16 use of various mechanisms and methodologies contained in SEEM, BellSouth  
17 systematically limits its potential liability by reducing the number of transactions  
18 for which BellSouth will be subject to remedies. The final remedy payout in  
19 BellSouth's SEEM is based on a subset of failed transactions, called the "affected  
20 volume." The affected volume computed in SEEM equals the product of two  
21 factors: a fraction referred to as the "volume proportion" and the number of  
22 transactions, representing violations, from cells having negative Z-scores.

23 As a component of SEEM, the remedy calculation uses a factor, a slope of  
24  $\frac{1}{4}$ , that inappropriately reduces BellSouth's liability. Use of this factor, which is  
25 used for even gross violations of parity, results in BellSouth paying only a  
26 fraction of the maximum penalty amount. In other words, the volume of  
27 transactions to which remedies would be applied is reduced. There exist no

1 substantiated reasons for BellSouth to use a slope of  $\frac{1}{4}$  to reduce the transactions  
2 that are subject to remedies.

3 Second, the use of the “affected volume” calculation is further  
4 compounded by the fact that the actual remedy calculation methodology used in  
5 BellSouth’s SEEM is inappropriate. The remedy calculation methodology used in  
6 SEEM determines violations at the aggregate level and applies remedies at the  
7 disaggregated level, which is biased toward BellSouth. The SEEM calculation  
8 methodology improperly excludes failed transactions from the cells with positive  
9 Z scores, even though these cells have already contributed to the aggregate Z. In  
10 other words, BellSouth will use some failed transactions in making the  
11 compliance determination, but neglect to use these same failed transactions in  
12 determining the remedy amount. The result is that BellSouth will make smaller  
13 payments than if the volume proportion, which is calculated from the state  
14 aggregate-Z, is applied to all cells. Therefore, BellSouth will only pay remedies  
15 on a small fraction of the transactions for which it has violated the designated  
16 performance standards. (See BellSouth’s remedy procedure, Exhibit AJV-3  
17 at 39).

18

19 **Q. ARE THERE ANY OTHER MECHANISMS USED IN BELL SOUTH’S**  
20 **SEEM THAT INAPPROPRIATELY REDUCE BELL SOUTH’S**  
21 **POTENTIAL LIABILITY FOR NON-COMPLIANT PERFORMANCE?**

22 **A.** Yes. The BellSouth Benchmark Adjustment Table<sup>13</sup> in SEEM allows for  
23 additional mitigation that is unnecessary and inappropriate. What this means is  
24 that BellSouth can fail more transactions before a non-compliance determination  
25 is made. For example, with a sample size of five, if the calculated result for a

---

<sup>13</sup> See Varner at AJV-3, Appendix E, p. 42.

1 month was 89.2% of all orders completed within three days, but the benchmark  
2 was 90% within three days, then a performance failure would have occurred  
3 unless some adjustment is made.<sup>14</sup>

4 In this example, the CLEC Benchmark Adjustment Table<sup>15</sup> would have  
5 allowed for an 80% attainment (missing one transaction), but the BellSouth  
6 Benchmark Adjustment Table would have allowed for a 60% attainment (missing  
7 two transactions). In other words, in the CLEC plan, missing more than one  
8 transaction would have triggered a non-compliant determination and in the  
9 BellSouth SEEM, a non-compliance determination would not have been triggered  
10 until more than two transactions failed. In this example, SEEM would not have  
11 generated any remedy.

12 Also, Mr. Varner suggests that escalating remedies for commensurate  
13 discriminatory performance is unnecessary. This represents yet another means for  
14 BellSouth to perform poorly, but reduce the remedies incurred. Non-compliant  
15 performance at all levels of severity is harmful. However, severe discriminatory  
16 performance clearly is devastating to CLEC customers. Therefore, the level of  
17 severity should impact the remedy amount.  
18

---

<sup>14</sup> Because some measurement results may be calculated using small data sets, some adjustment is warranted. This need arises because the benchmark proportion for a particular measure with few underlying data points may be practically impossible to attain unless the ILEC always performs perfectly.

<sup>15</sup> See Exhibit CLB-2.

1 Q. HOW DOES BELLSOUTH'S INCLUSION OF AN ABSOLUTE CAP IN  
2 SEEM IMPACT THE FCC'S REQUIREMENT THAT AN EFFECTIVE  
3 ENFORCEMENT PLAN PROVIDE A MEANINGFUL AND  
4 SIGNIFICANT INCENTIVE FOR BELLSOUTH TO COMPLY WITH  
5 THE DESIGNATED PERFORMANCE STANDARDS?

6 A. The inclusion of an absolute cap decreases BellSouth's incentive to comply with  
7 required performance standards. With an absolute cap, BellSouth has the  
8 opportunity to evaluate the "cost" of retaining its market share through non-  
9 compliant performance. BellSouth's SEEM includes an absolute cap of 36% of  
10 BellSouth's net operating revenue for Kentucky. Regardless of how severe  
11 BellSouth's discriminatory performance might be, once the cap is reached,  
12 BellSouth would pay no further remedies. Consequently, BellSouth would have  
13 no incentive to correct any deficiencies in its performance.

14 Mr. Varner argues that an absolute cap provides BellSouth a fail-safe to  
15 prevent the enforcement mechanism from spiraling out of control. (*See Varner at*  
16 *99:12-13.*) However, Mr. Varner's argument misses the point. The best way for  
17 BellSouth to "prevent the [enforcement] mechanism from spiraling out of control"  
18 is for BellSouth to provide CLECs with performance that is in compliance with  
19 designated performance standards. Thus, BellSouth is ultimately in control of the  
20 amount of remedies it will pay under any plan adopted by this Commission.

21 BellSouth should not be able to escape the consequences of providing  
22 discriminatory service through the establishment of an absolute cap. In order for  
23 a remedy plan to be a meaningful and significant incentive for compliant  
24 behavior, a procedural cap as proposed by AT&T would be more appropriate.  
25 The procedural cap would avoid the problems of an absolute cap and would not  
26 provide BellSouth with the opportunity to evaluate the "cost" of retaining market  
27 share through non-compliance. Moreover, unlike an absolute cap, a procedural  
28 cap does not absolve BellSouth from the consequences of performance  
29 deterioration.



1 Q. IN HIS TESTIMONY, MR. VARNER ARGUES AGAINST A  
2 PROCEDURAL CAP STATING THE USE OF A PROCEDURAL CAP  
3 COULD POTENTIALLY LEAD TO "IRREVERSIBLE FINANCIAL  
4 DAMAGE TO BELLSOUTH" AS "IT IS UNLIKELY THAT THE CLECS  
5 WOULD VOLUNTARILY RETURN ANY EXCESS PAYMENTS." (*Varner*  
6 at 100:17 & 100:24-25.) DO YOU AGREE?

7 A. No. In making his argument Mr. Varner ignores the fact that under the procedural  
8 cap as proposed by AT&T, BellSouth would continue paying remedies into a state  
9 fund until the Commission determines whether there is justification for exceeding  
10 the procedural cap. If the Commission were to find that no remedies should be  
11 paid in excess of the procedural cap, then the funds paid into the escrow account,  
12 along with any interest earned, would simply be returned to BellSouth. Thus,  
13 contrary to Mr. Varner's suggestion, any remedy payments made by BellSouth  
14 during the review process would be easily recovered.

15 Furthermore, contrary to Mr. Varner's testimony, the procedural cap  
16 proposed by AT&T is not the beginning of the process for setting an absolute cap.  
17 (*See Varner* at 100:6-11.) It is AT&T's position that BellSouth should continue  
18 to pay remedies as long as it is providing CLECs with discriminatory  
19 performance.

20 The purpose of the procedural cap is to afford BellSouth the opportunity to  
21 present the Commission with evidence as to why it should not be required to  
22 continue paying remedies beyond the procedural cap, even though it continues to  
23 provide CLECs with a discriminatory level of service.

24

25 Q. SHOULD THIS COMMISSION ACCEPT MR. VARNER'S SUGGESTION  
26 AND ADOPT A PROCEDURAL CAP WELL BELOW THAT PROPOSED  
27 BY AT&T AND SUSPEND REMEDY PAYMENTS ONCE THE  
28 PROCEDURAL CAP IS REACHED UNTIL AN ABSOLUTE CAP IS SET?

29 A. No. Mr. Varner's suggestion should be rejected. Mr. Varner's proposal is simply  
30 another attempt by BellSouth to further reduce its liability for failing to provide

1 CLECs with parity service as required by the Act. If Mr. Varner's suggestion  
2 were adopted, BellSouth's liability would be capped at a low threshold.  
3 Moreover, while the Commission is determining whether remedy payments  
4 should be made in excess of the cap, BellSouth would pay no remedies for  
5 providing non-compliant performance and the process would end in the  
6 establishment of an absolute cap on BellSouth's liability.

7 If BellSouth provides the CLECs with a level of service that is in parity  
8 with its own retail operations as required by the Act, BellSouth should not have  
9 any concern that it will ever reach the procedural cap. Contrary to what  
10 Mr. Varner suggests in his testimony, CLECs are not interested in shifting  
11 revenue from BellSouth through a performance incentive plan. What CLECs  
12 desire is simply to receive a level of service that will enable them to compete for  
13 and provide an equal level of service to their customers in Kentucky. Present  
14 circumstances, however, force CLECs to rely upon BellSouth in order to provide  
15 service to their customers. Therefore, if BellSouth is to be properly motivated to  
16 provide CLECs with parity service, it should not be allowed to gauge the cost of  
17 retaining its monopoly on the local market by providing non-complaint service to  
18 CLECs and their customers. The Louisiana Commission adopted a procedural  
19 cap. As stated previously, the amount of remedies BellSouth pays under any  
20 remedy plan is ultimately within BellSouth's control.

21  
22 **Q. DO THE MEASURES AND PERFORMANCE STANDARDS CONTAINED**  
23 **IN SEEM ENCOMPASS A COMPREHENSIVE RANGE OF CARRIER-**  
24 **TO-CARRIER PERFORMANCE AS REQUIRED BY FCC GUIDANCE?**

25 **A.** No. The measures in SEEM do not encompass a comprehensive range of Carrier-  
26 to-Carrier performance. The measures in BellSouth's SEEM are merely a subset  
27 of the BellSouth SQM. BellSouth inappropriately excludes many of the

1 BellSouth SQM measures from its remedy plan. The use of the narrow scope of  
2 measures provided in BellSouth's SEEM will result in critical, customer-  
3 impacting areas not being monitored or subjected to remedies.

4  
5 **Q. PLEASE PROVIDE AN EXAMPLE.**

6 A. The Speed of Answer In Ordering Center measure is not an enforcement measure  
7 in SEEM. When CLEC LSRs are rejected in error, the CLEC is forced to make  
8 contact with LCSC representatives before resubmitting the LSR. Abnormally  
9 long holding times hinder a CLEC's ability to expeditiously resubmit the LSR so  
10 that the CLEC's customer can receive the desired service. Consequently,  
11 customers have to experience an extended provisioning interval due to a CLEC's  
12 inability to obtain clarification from BellSouth on LSRs rejected in error.

13  
14 **Q. WERE THE PERFORMANCE MEASURES CONTAINED IN**  
15 **BELLSOUTH'S SEEM IDENTIFIED AS A RESULT OF A**  
16 **COLLABORATIVE PROCESS BETWEEN BELLSOUTH AND CLECS?**

17 A. No. Contrary to Mr. Varner's suggestion, the measures in BellSouth's SEEM  
18 were not selected in the same manner as the measures contained in the New York  
19 Bell Atlantic Plan. In New York, CLECs participated in developing the list of  
20 comprehensive measures from which the enforcement measures were selected.  
21 Additionally, Mr. Varner states in his testimony that the New York and Texas  
22 Commissions charged the CLECs with communication of the measurement set  
23 that was most "customer impacting." (*Varner* at 89:11-12.) BellSouth, however,  
24 did not allow the Kentucky CLECs to make a similar determination for SEEM.

25 BellSouth continues to imply that the measures in SEEM are patterned  
26 after those used in New York and Texas, but BellSouth has less than 82 sub-

1 measures that are subject to remedies, while Texas has several thousand  
2 sub-measures that are subject to remedies.

3

4 **Q. ARE THE PERFORMANCE MEASURES CONTAINED IN SEEM**  
5 **SUFFICIENT TO MONITOR FOR BACKSLIDING?**

6 A. No. The measures set forth by BellSouth do not cover the full scope of ILEC  
7 support required for unfettered local market competition to develop. BellSouth's  
8 current SEEM proposal only includes a subset of measures reflected in the  
9 BellSouth SQM. As a result, many important aspects of BellSouth's performance  
10 will not be examined and discriminatory performance in critical areas will not be  
11 sanctioned. Therefore, the measures in SEEM should be augmented by the  
12 performance measures<sup>16</sup> as set forth in Ms. Kinard's testimony.

13

14 **Q. DO YOU AGREE WITH MR. VARNER'S STATEMENT THAT AN**  
15 **ENFORCEMENT PLAN SHOULD NOT INCLUDE ALL MEASURES**  
16 **THAT THE COMMISSION ADOPTS IN AN SQM?**

17 A. No. It is beyond dispute that any enforcement plan must be based upon an  
18 underlying set of performance measurements that cover the full panoply of ILEC  
19 activities upon which CLECs must rely to deliver their own retail service  
20 offerings. Mr. Varner's statement concerning the FCC is misleading. It is true  
21 that in its Bell Atlantic Order the FCC stated, "We also believe that the scope of  
22 performance covered by the Carrier-to-Carrier metrics is sufficiently  
23 comprehensive, and that the New York Commission reasonably selected key  
24 competition-affecting metrics from this list for inclusion in the enforcement  
25 plan."<sup>17</sup> However, one cannot ignore the fact that the FCC's statement is based on

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<sup>16</sup> See additional measures specified in Karen Kinard's testimony.

<sup>17</sup> See *Bell Atlantic New York Order* ¶ 439.

1 the New York Commission selecting enforcement measures from a set of  
2 measures that were collaboratively developed. The enforcement measures in  
3 SEEM were not selected from a base set of collaboratively established measures.  
4

5 **Q. DOES BELLSOUTH EXCLUDE MEASURES FROM SEEM THAT ARE**  
6 **CRITICAL TO CLECS?**

7 A. Yes. BellSouth's SEEM limits monitoring of critical, customer-impacting areas  
8 of performance. For example, BellSouth excludes Speed of Answer from  
9 Ordering Center. Delays in LCSC responses extend customer provisioning  
10 intervals and therefore delays service to Kentucky consumers. The exclusion of  
11 this measure from SEEM will allow non-compliant support in this area to occur  
12 without any consequences to BellSouth and will prevent the monitoring of  
13 BellSouth's performance in this critical area.

14 Other "key" SQM measures that BellSouth decided to omit from its  
15 remedy plan include the following:

- 16 • Service Inquiry with LSR Firm Order
- 17 • Mean Held Order Interval
- 18 • Average Jeopardy Notice Interval
- 19 • Percentage of Orders Given Jeopardy Notice
- 20 • Average Completion Notice Interval
- 21 • Coordinated Customer Conversion – Average Recovery Time
- 22 • Speed of Answer Performance/Average Speed to Answer-Toll
- 23 • Speed to Answer Performance/Percent Answered within "x"  
24 seconds – Toll
- 25 • Speed to Answer Performance/Average Speed to Answer – DA  
26

- 1 • Speed to Answer Performance/Percent Answered with “X”
- 2 Seconds - DA
- 3 • Collocation Average Response Time
- 4 • Collocation Average Arrangement Time
- 5 • Change Management Notice Average Delay Days
- 6 • Change Management Documentation Average Delay Days
- 7 • Meantime to Notify CLEC of Network Outage
- 8 • Recurring Charge Completeness
- 9 • Non-Recurring Charge Completeness
- 10 • Database Update Interval
- 11 • Database Update Accuracy
- 12 • NXX and LRNs Loaded by LERG Effective Date
- 13 • Notification of Interface Outages

14 **Q. DOES BELLSOUTH INAPPROPRIATELY EXCLUDE SOME**  
15 **ENFORCEMENT MEASURES FROM TIER I CONSEQUENCES?**

16 A. Yes. BellSouth’s SEEM inappropriately excludes the following enforcement  
17 measures from Tier I remedies.<sup>18</sup>

- 18 • Loop Makeup – Response Time – Manual
- 19 • Loop Makeup – Response Time – Electronic
- 20 • Acknowledgement Message Timeliness
- 21 • Acknowledgement Message Completeness

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<sup>18</sup> Enforcement measures are SQM measures selected by BellSouth for inclusion in SEEM. BellSouth’s testimony on this point is contradictory. Mr. Varner indicates FOC Timeliness and Reject Intervals are Tier I measures but these measures are not included as Tier I measures in AJV3. (See Varner at 94:7-14.)

- 1 • Percent Flow-through Service Requested
- 2 • Invoice Accuracy
- 3 • Mean Time To Deliver Invoice
- 4 • Usage Data Delivery Accuracy
- 5 • Reject Interval
- 6 • FOC Timeliness
- 7 • Cooperative Acceptance Testing - % xDSL Loops Tested

8 This means that BellSouth can provide non-compliant support to an  
9 individual CLEC in these areas without any consequence for its discriminatory  
10 behavior. For example, because FOC Timeliness for individual CLECs would not  
11 be monitored in SEEM, BellSouth can hinder an individual CLEC's ability to  
12 provide its customers with timely notice of service without fear of a consequence.  
13 There must be consequences for BellSouth's failure to perform adequately in  
14 regard to all measures that this Commission orders BellSouth to include in its  
15 SQM. Consequently, the measures listed above should be included in any remedy  
16 plan this Commission adopts and should be subject to remedy payments to  
17 individual CLECs.

18

19 **Q. SHOULD BELLSOUTH OMIT MEASURES FROM SEEM BASED UPON**  
20 **EXHIBIT AJV-4 TO MR. VARNER'S DIRECT TESTIMONY?**

21 A. No. There has been no industry-developed correlation analysis conducted to  
22 validate the content of Exhibit AJV-4. The decision regarding whether to apply a  
23 remedy depends on the strength of the correlation between the measures. Just  
24 because a measure appears to be duplicative or correlated to another does not  
25 necessarily mean that they are. An analysis of the data is required to make such a  
26 determination. Without data, there cannot be any correlation determination. If a  
27 thorough and appropriate data investigation discloses that two measures are very

1 highly correlated, then they are in effect measuring the same thing. Therefore,  
2 applying penalties to each measure would not be appropriate. If, however, the  
3 correlation is moderate to small, the metrics are not measuring the same thing and  
4 remedies should apply.

5 An industry-developed correlation analysis is required to determine  
6 whether there exists any correlation between measures. Until an industry-  
7 developed correlation analysis can be conducted, any determination regarding the  
8 correlation between measures is merely a guess. Therefore, no measures should  
9 be excluded based upon alleged correlation between measures.

10

11 **Q. IS IT APPROPRIATE FOR BELL SOUTH TO OMIT SQM MEASURES**  
12 **FROM ITS REMEDY PLAN BECAUSE IT CONSIDERS THE MEASURE**  
13 **TO BE “PARITY BY DESIGN”?**

14 **A.** No. “Parity by design” is not defined. BellSouth classes some measures as  
15 “parity by design” because their position is that the metric measures a process that  
16 serves both BellSouth retail and CLECs without differentiation. However, before  
17 CLECs can understand and agree with BellSouth’s designation of measures as  
18 “parity by design,” an audit is required by an independent third party to determine  
19 if “parity by design” exists. The third party should demonstrate an unbiased, open  
20 posture regarding its methods and procedures of evaluation.

21

22 **Q. BELL SOUTH HAS PROPOSED DISAGGREGATION IN SEEM. IS**  
23 **THAT LEVEL OF DISAGGREGATION APPROPRIATE?**

24 **A.** No. Both CLECs and BellSouth agree that disaggregation should proceed to a  
25 level where like-to-like comparisons can be made. BellSouth states that its  
26 position endorses “like-to-like” comparisons. However, BellSouth’s position is  
27 contradicted by the inadequate product disaggregation that continues to be a  
28 characteristic of SEEM. In his direct testimony, Mr. Varner failed to state that the



1 21 levels of product disaggregation for BellSouth SQMs are absolutely  
2 meaningless to the SEEM remedy plan. The product disaggregation in SEEM is  
3 limited to only seven levels.

4 The inadequate level of disaggregation in SEEM facilitates the  
5 consolidation of dissimilar products for comparisons. For example, within SEEM  
6 BellSouth aggregates DS1 Loops and 2-Wire Analog Loops for provisioning  
7 metrics such as Average Completion Interval, even though each of the various  
8 UNEs has a different provisioning interval. For example, the interval for one DS1  
9 Loop is 23 days and the interval for one 2-Wire Analog Loop is four days.<sup>19</sup>  
10 Aggregating these products is inappropriate and does not contribute to “like-to-  
11 like” comparisons. Moreover, such aggregation masks differences and makes  
12 detection of inferior performance less likely. It allows discrimination on high-  
13 revenue/low volume products such as DS1s or DS3s to be concealed easily  
14 through consolidation with a dissimilar low-revenue high volume product such as  
15 an Analog Loop. Consequently, insufficient product disaggregation will allow  
16 BellSouth to influence the type and pace of developing competition.

17 Additionally, the remedy plan only specifies one level of disaggregation  
18 for the Reject Interval in SEEM. Therefore, performance on a large number of  
19 service requests, represented as partially mechanized and nonmechanized LSRs,  
20 is not subject to remedies, even though BellSouth’s performance may be non-  
21 compliant.

22  

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<sup>19</sup> See BellSouth Products & Services Interval Guide – Network And Carrier Services, Customer Guide  
CG-INTL-001, Issue 3b-December 2000.

1 Q. HOW CAN THIS COMMISSION COMPROMISE BETWEEN THE  
2 LEVEL OF DISAGGREGATION PROPOSED BY BELLSOUTH AND  
3 THE LEVEL OF DISAGGREGATION PROPOSED BY AT&T?

4 A. Mr. Varner acknowledges in his direct testimony that achieving an appropriate  
5 level of disaggregation is very important. (See *Varner* at 14:11-12.) A more  
6 precise determination of the appropriate level of disaggregation could likely be  
7 made if BellSouth made the appropriate data available to CLECs. If CLECs were  
8 given access to BellSouth data, it is possible that the data may warrant elimination  
9 of some levels of disaggregation CLECs requested. For example, CLECs ask for  
10 disaggregation by MSA in order to obtain an accurate picture of the level of  
11 BellSouth's performance to rural areas and urban areas. The CLECs' concern is  
12 that if BellSouth's performance data is not reported separately, discriminatory  
13 performance provided to rural areas of the state could be masked by better  
14 performance, and greater volumes in the urban areas BellSouth serves. If  
15 BellSouth were willing to provide the necessary data to establish that its  
16 performance in various MSA is the same, CLECs might be able to eliminate the  
17 MSA level of disaggregation. Absent such a determination, CLECs' interest in  
18 obtaining parity service for their customers in all areas of the state where they  
19 offer service requires that they seek some level of disaggregation by MSA.

20 BellSouth and CLECs, with the help of a mediator from the Commission,  
21 might be able to arrive at a level of disaggregation that is agreeable to all parties.  
22 But, this would require all the data and the good faith participation of all parties.  
23 BellSouth has thus far been unwilling to accept any input from CLECs with  
24 regard to the development of its SQM or SEEM. Nevertheless, at the very least,  
25 BellSouth should be required to provide the same level of disaggregation in its  
26 SQM and SEEM.

27

1 Q. CAN YOU ELABORATE ON HOW INAPPROPRIATE RETAIL  
2 ANALOGS HINDER THE ABILITY TO DETECT POOR  
3 PERFORMANCE?

4 A. Yes. Use of an inappropriate retail analog allows BellSouth to actually report  
5 compliant support, even though in reality they are providing discriminatory  
6 support. As an example, the retail analog for OCI – UNE Loops are Retail  
7 Residence & Business Dispatch. A significant percent of the UNE Loop  
8 observations could be UNE Analog Loops that are all dispatch-in. Dispatch-in  
9 signifies that the work is done within the Central Office. Dispatch usually refers  
10 to service where the work is done in the field or outside of the Central Office.  
11 Clearly, work done within the Central Office has a shorter interval than work  
12 done away from the Central Office.

13 Thus, given the retail analog is designated as Retail Residence & Business  
14 Dispatch, for this example BellSouth would always appear to be providing longer  
15 intervals for itself (i.e., compliant support) primarily because the retail analog is  
16 inappropriate. Thus, it is critical for the accurate detection of discriminatory  
17 performance that retail analogs be properly specified.

18

19 Q. CAN YOU ELABORATE FURTHER ON HOW SEEM FAILS TO  
20 SANCTION POOR PERFORMANCE?

21 A. Yes. Under Tier II of SEEM BellSouth could potentially have two consecutive  
22 months of industry-wide, non-compliant performance and not incur any  
23 consequences if the third month was complaint. It is unacceptable for CLEC  
24 customers to receive deplorable service for two consecutive months and  
25 BellSouth not face any consequences. Additionally, it appears that there are no  
26 special consequences for chronic violations at the industry level in SEEM.

27 Moreover, BellSouth's SEEM supports limitations on BellSouth's liability  
28 for an act or an omission by a CLEC that is contrary to any of its obligations

1 under its Interconnection Agreement with BellSouth; an act or omission by a  
2 CLEC that is contrary to any of its obligations under the Act, Commission rule, or  
3 state law; or an act or omission associated with third-party systems or equipment.  
4 These perceived acts or omissions should not automatically limit BellSouth's  
5 liability.

6 In some circumstances, BellSouth's acts could force a CLEC to act  
7 contrary to its Interconnection Agreement. For example, a CLEC's  
8 Interconnection Agreement may prohibit the submission of orders in unreasonable  
9 quantities or at unreasonable times. However, problems in BellSouth's OSS  
10 could cause orders to be submitted in what is perceived by BellSouth to be  
11 "unreasonable quantities."

12 BellSouth's OSS may also dictate the time when orders can be sent and  
13 therefore be received by BellSouth. As an example, the gateway may experience  
14 an abnormality on Thursday and Friday that causes an increase in the number of  
15 orders received on Saturday. The CLEC is not the cause of the problem.  
16 BellSouth's liability should not be limited in this scenario.

17 BellSouth also identifies Force Majeure events as a rationale for limiting  
18 its liability. While such events may in fact occur, there is no reason to believe  
19 that such events would have a disproportionate impact on CLEC customers as  
20 opposed to BellSouth customers. Therefore, Force Majeure events do not warrant  
21 excusing BellSouth from the payment of remedies. If such events occur,  
22 BellSouth should be permitted to request relief, but relief should not be automatic  
23 and should be allowed only where the evidence of the event's impact upon  
24 BellSouth's performance is clear. It is inappropriate to have automatic exclusions  
25 from otherwise applicable consequences in a self-effectuating remedy plan.  
26

1 **Q. DOES SEEM PROVIDE REASONABLE ASSURANCES THAT THE**  
2 **REPORTED DATA IS ACCURATE?**

3 A. No. SEEM incorporates an audit to certify the current year aggregate level  
4 reports for both BellSouth and CLECs. However, SEEM does not require a  
5 comprehensive audit of BellSouth's performance measurement data collection,  
6 storage, retrieval and reporting processes, along with end-to-end tracking of  
7 orders through BellSouth's systems and processes to ensure that reported  
8 performance is accurate. An effective enforcement plan would require a  
9 comprehensive performance measurement audit to provide reasonable assurances  
10 that the reported data and performance are accurate.

11 BellSouth's audit policy continues to omit the need to validate that the  
12 source data that feeds into PMAP is being captured accurately.

13

14 **Q. IS THERE A NEED FOR CLECS TO HAVE THE RIGHT TO AUDIT OR**  
15 **REQUEST A REVIEW BY BELL SOUTH FOR ONE OR MORE**  
16 **SELECTED MEASURES WHEN IT HAS REASON TO BELIEVE THE**  
17 **DATA COLLECTED FOR A MEASURE IS FLAWED?**

18 A. Yes. During report validation, CLECs have observed that the BellSouth-provided  
19 PMAP data upon which performance reports are based, is incomplete. The  
20 testimony of Sharon Norris filed today concerning data integrity fully discusses  
21 the various data inaccuracies and missing data problems. Therefore, the  
22 performance results in a particular report can be totally inaccurate given that the  
23 report is based on an incomplete set of data. CLEC validation of BellSouth  
24 PMAP data occurs on a monthly basis. If CLECs identify an abnormality two  
25 months after the annual audit, BellSouth is suggesting that they wait until the next  
26 annual audit to address CLECs' concern. Based on the audit policy in the  
27 BellSouth SQM, this problem might not be addressed and would result in  
28 performance reports that are inaccurate and present a false representation of  
29 BellSouth's performance.

1

2 **Q. ARE REMEDIES FOR LATE, INCOMPLETE AND INACCURATE**  
3 **PERFORMANCE REPORTING INCLUDED IN OTHER REMEDY**  
4 **PLANS APPROVED BY THE FCC?**

5 A. Yes, the SWBT remedy plan includes a payment for late and incomplete  
6 performance reports. Specifically, the SWBT plan includes a payment of \$5,000  
7 for every day past the due date a report is late and a payment of \$1,000 per day  
8 for each missing performance result. Remedies should be assessed and paid by  
9 BellSouth to the Commission for late, inaccurate and incomplete reports. CLECs  
10 have already experienced the late submission of inaccurate and incomplete  
11 performance reports by BellSouth.

12

13 **Q. CAN “INACCURATE” AND “INCOMPLETE” BE DEFINED?**

14 A. Yes, what is meant by “inaccurate” and “incomplete” can be precisely defined.  
15 When the reported performance and raw data do not include all the appropriate  
16 data in the reporting, then it is considered to be incomplete. Likewise, reported  
17 performance and raw data are considered to be inaccurate when inappropriate data  
18 or incorrect calculations are used in the generation of reports.

19

20 **Q. WHAT IS THE GOAL OF THIS REMEDY?**

21 A. The primary goal associated with this specific remedy is to motivate BellSouth to  
22 submit accurate performance data and reports on the agreed upon due date. A  
23 value was established by CLECs that they felt would motivate appropriate  
24 behavior on the part of BellSouth. However, the final amounts chosen are up to  
25 the Kentucky Public Service Commission. It is important to reiterate that CLECs  
26 would like to assume that these fines will never be paid. Nevertheless, CLECs

1 believe that the enforcement plan adopted by this Commission should include  
2 penalties for late and inaccurate reporting.

3

4 **Q. WHEN SHOULD BELLSOUTH BE REQUIRED TO MAKE REMEDY**  
5 **PAYMENTS FOR FAILURE TO MEET DESIGNATED PERFORMANCE**  
6 **STANDARDS?**

7 A. BellSouth should make remedy payments on or before the 15th business day after  
8 the reporting of the performance for the month upon which the remedies are  
9 based. Waiting an additional forty-five days, as recommended by BellSouth, is  
10 completely unreasonable. The calculation of remedies is an automated function.  
11 Therefore, there can be no technical justification for intentionally delaying  
12 consequences for discriminatory behavior by BellSouth.

13

14 **Q. DOES BELLSOUTH INHIBIT CLECS' ABILITY TO VALIDATE**  
15 **REPORTED PERFORMANCE?**

16 A. Yes. BellSouth does not provide all the raw data needed by CLECs to validate  
17 BellSouth's reported performance for collocation, billing, database update  
18 information, E911, change management, operator assistance and directory  
19 assistance measures.

20

21 **Q. SHOULD IMPLEMENTATION OF THE REMEDY PLAN ADOPTED BY**  
22 **THIS COMMISSION BE DELAYED UNTIL AFTER BELLSOUTH**  
23 **RECEIVES APPROVAL TO OFFER INTERLATA SERVICE?**

24 A. No. A well-developed remedies plan serves several important purposes. First, it  
25 promotes the initial development of competition by providing the incentive for  
26 BellSouth to allow nondiscriminatory access to its network required by Section  
27 251 of the Act. The ability to offer customers at least the same level of service  
28 that they would receive from BellSouth is critical to ALEC efforts to attract and

1 retain customers. Second, once competition develops, self-enforcing penalties  
2 help to guarantee that BellSouth will continue to provide ALEC customers with  
3 the same quality service it provides to its retail customers. Third, where  
4 BellSouth does provide discriminatory or non-parity service to ALEC customers,  
5 penalties are paid to ALECs to partially defray the additional costs attributable to  
6 inferior service provided by BellSouth. These costs include additional internal  
7 costs to resolve problems attributable to BellSouth's sub-par performance, in  
8 addition to credits given to customers to keep the customers' good will when  
9 service problems arise.<sup>20</sup> Fourth, uncovering discriminatory service may lead to  
10 the discovery of underlying problems in BellSouth's systems and/or procedures.  
11 Once such problems are identified, penalties provide the incentive for BellSouth  
12 to address them head-on rather than to simply implement quick, short term fixes.  
13 Fifth, rather than waiting for problems to be discovered, the prospect of remedies  
14 for discriminatory performance will provide an incentive for BellSouth to take  
15 proactive steps to avoid providing poor quality performance to ALECs. Finally,  
16 adverse consequences for discriminatory behavior will discourage backsliding  
17 once BellSouth has attained approval to enter the interLATA market.

18 The varied purposes served by a remedies plan make it essential to  
19 institute such a plan as soon as possible. Other state commissions have  
20 recognized that the enforcement plans should be implemented prior to an ILEC  
21 receiving 271 approval.

22 BellSouth maintains that remedies should only be adopted to prevent  
23 backsliding once BellSouth has entered the long distance market. Yet avoiding  
24 backsliding is only one of the purposes served by a remedies plan. In fact both

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<sup>20</sup> Of course, low quality service and repeated service problems causes harm to a ALEC's reputation in ways that cannot be repaired through monetary sanctions.



1 the Georgia and Louisiana Commission directed that their enforcement plans  
2 would be effective prior to BellSouth receiving approval to offer interLATA  
3 service.

4 By delaying adoption of a penalty plan until BellSouth enters the long  
5 distance market, the Commission would forego the opportunity to enable more  
6 rapid development of competition. An appropriate penalty plan will encourage  
7 BellSouth to provide nondiscriminatory service during the critical early stages of  
8 competition, while providing some compensation to ALECs for the additional  
9 costs they incur when BellSouth's performance falls short. Further, putting the  
10 remedy plan into effect immediately would illustrate to regulatory authorities that  
11 BellSouth is committed to irreversibly opening the local market to competition.

12

13 **Q. SHOULD THIS COMMISSION ADOPT BELLSOUTH'S SEEM?**

14 A. No. The FCC has set forth a framework for analyzing the reasonableness of a  
15 proposed enforcement plan that includes five key aspects that a performance  
16 assurance plan should include. BellSouth's SEEM clearly falls outside this  
17 prescribed zone of reasonableness. The measures included in SEEM do not  
18 provide the necessary information regarding support activities essential to the  
19 development of competition. In the few instances where BellSouth proposes to  
20 permit examination of its performance, it offers inadequate levels of  
21 disaggregation that afford BellSouth the opportunity to mask discrimination.  
22 BellSouth's SEEM also uses a remedy calculation methodology that  
23 inappropriately eliminates failed transactions that are subject to remedies.

24 Further, BellSouth's SEEM includes a cap on remedies that allows  
25 BellSouth to escape consequences for discriminatory performance. BellSouth's

1 SEEM will not provide adequate incentives to prevent or correct "backsliding"  
2 performance. Therefore, this Commission should not adopt BellSouth's SEEM.

3

4 **Q. DOES THAT CONCLUDE YOUR TESTIMONY?**

5 A. Yes.

6

7

**Exhibit CLB-1**  
**Performance Incentive Plan**  
**Version 2.0**

## **Performance Incentive Plan**

### **Version 2.0**

#### **Introduction**

It is well recognized that a meaningful system of self-enforcing consequences for discriminatory ILEC performance is critically important to the protection of the public's interest and the rapid and sustainable development of a competitive local telecommunications market. Incumbent LECs have strong business incentives and means to maintain their current monopolies through the delivery of inadequate and unlawful levels of operations support for CLECs. Thus, an appropriate system of self-enforcing consequences is absolutely necessary to assure that the competitive local telecommunications markets envisioned by the 1996 Act will be able to develop and survive.

In order to be effective, prompt enforcement of appropriate consequences must be assured. Because of the extensive delays inherent in the adjudication and appeals process, CLECs cannot rely solely upon the legal/regulatory process to obtain appropriate remedies for discriminatory ILEC performance. Furthermore, the consequences must provide ILECs with incentives that exceed the benefits it may derive by inhibiting competition, and such consequences must be immediately imposed upon a demonstration of poor ILEC performance. The objective is to set the incentives in amounts that encourage ILECs to take proactive steps to prevent its performance from becoming non-compliant and, when it does reach that level, to correct its performance failures promptly.

It is beyond dispute that any system of self-enforcing consequences must be based upon an underlying set of performance measurements that cover the full panoply of ILEC activities upon which CLECs must rely to deliver their own retail

service offerings. The Act requires that these activities, which touch upon every aspect of the business relationship between incumbents and CLECs, must be provided in a non-discriminatory manner. Thus, the interconnection agreements between incumbents and CLECs should ideally serve as a source for performance measurements. However, experience in Mississippi and elsewhere has proven that CLECs have generally been unable to individually negotiate, or even arbitrate, a sufficiently robust set of performance measurements.<sup>1</sup> For that reason, the first step in constructing a system of self-enforcing consequences must include careful consideration of the adequacy of the underlying measurement set. At a minimum, the performance measurements must supply each CLEC with reliable data on the incumbent's performance for that CLEC. Such data must be sufficiently discrete (as to the processes monitored) and detailed (to isolate and compare only comparable conditions) so as to permit a CLEC to enforce the terms of its interconnection agreement with the incumbent. In addition, the underlying performance measurement system should demonstrate quality implementation of the following characteristics:

- A comprehensive set of comparative measurements that monitors all areas of support (i.e., pre-ordering, ordering, provisioning, maintenance & repair and billing) without preference to any particular mode of market entry
- Measurements and methodologies that are documented in detail so that clarity exists regarding what will be measured, how it will be measured and in what situations a particular event may be excluded from monitoring (such exclusions must also be tracked and reported)

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<sup>1</sup> As a starting point, the CLEC industry generally supports the measurement areas specified in Karen Kinard's Rebuttal Testimony.

- Sufficient disaggregation of results, so that only the results for similar operational conditions are compared and, particularly, so that the averaging of results will not mask discrimination<sup>2</sup>
- Pre-specified and pro-competitive performance standards exist. This includes identifying reasonably analogous performance delivered by the incumbent to its own operations<sup>3</sup> or, when such comparative standards are not readily identifiable, then absolute minimum standards for performance (benchmarks) are established<sup>4</sup>
- Sound quantitative methodology is used to compare CLEC experiences to analogous incumbent support<sup>5</sup>
- The overall performance measurement system is subject to initial and periodic validation, in order to assure that the performance results which form the foundation for all decisions regarding the quality of the performance delivered by the ILEC are correct representations of the CLECs' marketplace experience.

---

<sup>2</sup> The importance of sufficient disaggregation is more fully discussed in Attachment A

<sup>3</sup> Analogous performance must be broadly interpreted and consider not only retail operations of the incumbent but also operations of affiliates. Often the incumbent's asserted lack of analogous performance relies upon very narrow (and inappropriate) interpretation of the term "analogous" to mean "precisely identical" rather than "similar in key aspects." Furthermore, if the incumbent delivers different levels of performance to an affiliate and its the retail operations, the CLEC experience should be compared to the better of the two.

<sup>4</sup> In all cases, benchmarks must provide an efficient competitor with a meaningful opportunity to compete.

<sup>5</sup> As a general rule, when benchmarks are employed, statistical comparisons of the measured result for the CLEC to the benchmark are not appropriate. Typically, the standards state a minimum performance level that is required to support effective competition and the minimum success level that must be demonstrated to attain the benchmark. Thus, the typical form of the standard is, for example, "95% installed within 3 days." Note that in the preceding example a 5% deviation from the benchmark is permitted and, as a result, the potential for random variation of the performance is fully addressed. Any further accommodation of variation, as would occur if statistical procedures were employed, would effectively "double count" forgiveness of variability.

It is critical that a performance measurement system incorporating all of the above characteristics exist before applying an incentive plan, because a robust and independently audited performance measurement system is a prerequisite to any effective system of self-enforcing consequences.<sup>6</sup>

### **Objectives of the Plan**

A system of self-enforcing consequences must fully implement the following objectives:

- Consequences must be based upon the quality of support delivered on individual measures to individual CLECs
- Total consequences, in the aggregate, must have sufficient impact to motivate compliant performance without the need to apply a remedy repeatedly
- The imposition of financial consequences must be prompt and certain, and consequences should be self-executing so that opportunities for delay through litigation and regulatory review are minimized
- Consequences must escalate as the basis for concluding that a performance failure exists becomes more substantial and/or the performance repeatedly fails to meet the applicable standard
- Additional consequences must apply when non-compliant performance is provided to CLECs on an industry-wide basis

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<sup>6</sup> For example, business rules for individual performance measurements may provide for automatic exclusions of data points from the calculation. If such provisions are made, however, the exclusions must be according to clearly defined rules and the number of data points excluded for each submeasurement and for each CLEC should be reported on a monthly basis.

- Exclusions from consequences must be minimized and the exclusions that are provided for must be monitored and limited to assure they do not mask discrimination
- Incumbents must have minimal opportunities to avoid consequences through such means as liability caps, offsetting credits, or a requirement that CLECs must demonstrate an ILEC's intent to harm
- Potential "entanglement" costs must be minimized so that, for example, access to mitigation measures for the incumbent does not become a means to revert to the legal/regulatory process and delay the application of consequences that should be self-enforcing

### **Structure of Consequences for Discriminatory ILEC Performance**

Consequences operating on two tiers are proposed. The first tier addresses the consequences for non-compliant performance delivered to an individual CLEC. The second addresses the consequences for non-compliant performance delivered to the CLEC industry as a whole. In general terms, Tier I provides a form of non-exclusive liquidated damages payable to individual CLECs. Tier II, by contrast, incorporates what can be characterized as regulatory fines that are necessary when the ILEC's performance affects the competitive market – and consumers -- as a whole.

The total amount of Tier I payments (which are only an estimate of the CLECs' actual damages) is unlikely to provide the ILEC with sufficient incentives to take the actions necessary to eliminate its monopoly. Rather, an ILEC may decide to treat such payments as the price for retaining its monopoly and voluntarily incur them as a cost of doing business. Moreover, the harm that results when the ILEC provides discriminatory support for the CLEC industry in the aggregate has a major impact not only on CLECs but also on the operation of the competitive marketplace in general, which directly affects all Mississippi consumers of



telecommunications services. Thus, it is appropriate to establish incentives to prevent this type of harm from occurring (or continuing), and both Tier I and Tier II are necessary and complementary elements of an effective system of consequences. Together, they work in tandem to achieve the goals of the Act.

### Tier I

A Tier I consequence should be payable to an affected CLEC whenever any performance result indicates support delivered by the ILEC to an individual CLEC fails to meet or exceed the applicable performance standard.<sup>7</sup>

The first step in establishing Tier I consequences is to define the rule for determining if performance for a particular period “passes” or “fails” and, if it fails, whether additional consequences are warranted. Defining “pass/fail” rules requires that the underlying measurements be mapped into one of two classes:

(1) those for which the performance standard is parity with analogous incumbent LEC performance results, and

(2) those for which the performance standard is an absolute level of required performance (otherwise known as a benchmark)

The differentiation is important because when parity is the standard, statistical procedures are usually necessary to draw conclusions regarding compliance. In such situations (which should apply to the vast majority of cases), two separate data sets are compared – one for the CLEC and one for the ILEC. Each data set is characterized by a mean and standard deviation. Statistical tests are used to

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<sup>7</sup> In the course of establishing Tier I consequences, the rights of an individual CLEC to pursue actual damages must be retained. However, if a CLEC sought to pursue a claim for actual damages, it would be reasonable to offset the damage award by any Tier I payments it received from the ILEC for the same time period and performance areas. In addition, a CLEC must retain the right to waive Tier I claims and pursue its individually negotiated contract remedies (if and only if the claims and remedies are not mutually payable.).

draw a conclusion regarding the likelihood that the data sets with the observed means and standard deviations were drawn from the same population (in this case a support process for CLECs with the same quality and/or timeliness as that employed for the ILEC). The proper test further allows determination that parity does not exist, but it does not quantify "how far out of parity" the process is when parity is not indicated.<sup>8</sup>

In contrast, when a benchmark serves as the performance standard, measurement establishes a performance failure directly and assesses the degree to which performance departs from the standard. As explained below, the detailed mechanism for determining a performance failure differs for each of these types of measurement standards, but the principle governing the application of the Tier I consequence is consistent: the consequence escalates with increasing evidence and level of non-compliant performance.

### **Tier I Business Rules for Parity Measurements**

#### **1. Use the Modified z-Statistic to Determine Compliance**

The determination of whether performance is compliant (i.e., equal to or better than the appropriate standard) is based on the calculation of the modified z-statistic (z).<sup>9</sup> The calculated modified z-statistic is then compared to the cumulative normal distribution table to determine if parity exists.<sup>10</sup> For any such

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<sup>8</sup> Clearly, however, when all other factors are held constant, increased statistical confidence is directly correlated with larger differences in the two sample means being compared and therefore is a reasonable indication of how different ILEC performance was for itself versus that of the CLEC in the period of observation.

<sup>9</sup> See: Local Competition Users Group - Statistical Tests for Local Service Parity, February 6, 1998, Version 1.0 for documentation of the calculation and use of the modified z-statistic.

<sup>10</sup> The modified z-statistic computation provides for the CLEC mean to be subtracted from the ILEC mean. Thus, a negative z-statistic critical value presumes that worse performance exists when the CLEC mean becomes larger than the ILEC mean. For example, worse performance exists when the order completion interval for the CLEC

decision rule, the probability of an erroneous decision is known. For example, if the critical value is  $-3.00$  and parity actually exists, the probability of saying it is not is 0.13%.

## **2. Use Permutation Analysis for Small Samples**

Permutation analysis is employed for small data sets (those with 30 or fewer observations in one of the data sets to be compared) to create a probability distribution as an alternative to the cumulative normal distribution.<sup>11</sup> By mutual agreement, permutation analysis can also be employed for larger data sets.

## **3. Use the Balancing Critical Value**

The threshold level to determine whether or not a performance failure exists is established by balancing Type I and Type II error.<sup>12</sup> This balance point is a function of the size of the CLEC data set (assuming the ILEC data set is very large) and the extent to which the means for the two data sets differ (assuming that both data sets are normally distributed). Simulation comparing relatively small data sets (as would be likely for a CLEC) to a much larger data set (as would likely exist for an ILEC) demonstrates that the balancing of Type I and Type II error can reasonably be expected to occur in the range of 25% for

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exceeds that for the ILEC. Thus a negative z-statistic critical value is appropriate. On the other hand, for a metric like "% completed within x days", worse performance for the CLEC occurs when the metric result is smaller for the CLEC vis-à-vis the ILEC. In this case a positive z-statistic critical value is appropriate.

<sup>11</sup> See Attachment B for a description of the procedural steps for performing permutation analysis. Again, BST and the CLECs generally concur that permutation analysis is appropriate for data sets of this size.

<sup>12</sup> The key consideration is balancing the probability of drawing erroneous conclusions -- either that performance is "bad" when it is actually "good" (Type I error) or that performance is "good" when it is actually "bad" (Type II error). The former error adversely impacts ILECs and the latter adversely impacts CLECs. Unfortunately, reducing the likelihood of one type of error increases the likelihood of the other type of error occurring. Thus the best means to create an equitable outcome for all parties is to balance the Type I and Type II error.

"samples" with fewer than 100 data points but is about 5% for samples with 1000 data points.<sup>13</sup> The statistical methodology developed by AT&T and Ernst & Young in Louisiana is an appropriate method for calculating the critical values which depend on the sample size and balances Type I and Type II error probabilities for each given submeasure. Furthermore, the definition of the alternative hypothesis required to perform the balancing is fundamental to the applicability of the method. THE ALECS proposes a value of 0.25 for the parameter  $\delta$  and appropriately corresponding values for  $\epsilon$  and  $\psi$ .

**4. Increase Consequences as the Confidence in a "Non-Parity" Conclusion Increases**

An appropriate means to take increased confidence into consideration is to provide for higher amounts of monetary consequences as the confidence in the "non-parity" conclusion increases. This is justified because (all other factors held constant) as the difference in the mean performance for the CLEC compared to the ILEC becomes larger, the absolute value of the modified z-statistic also becomes larger for the sample in the time period of interest. Thus, it is appropriate that the performance consequence should escalate based upon the calculated value of the modified z-statistic.

**5. After a Failed Parity Test the Consequences Should Escalate and Vary Continuously with Severity of Failure**

A parity failure is established for a submeasure by comparing the measured value of the modified z-statistic ( $z$ ) to the balancing critical value ( $z^*$ ) appropriate for the submeasure's sample size during the given monthly period. Once a submeasure failure is obtained, the calculated remedy should be a continuous function of severity of the failure as measured by the magnitude of the modified

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<sup>13</sup> See Response to Question 3 contained in AT&T Ex Parte filed in CC Docket 98-56 dated July 13, 1999.

z-statistic. In this way small changes in severity lead to small changes in consequences thus assuring that mathematically chaotic behavior is avoided at step thresholds. However, to incent the ILEC appropriately, the change in consequences should increase with each unit of severity. This form of consequences as a function of severity is most simply accomplished by the use of a quadratic function of the ratio of the measured modified z score to the balancing critical value ( $z/z^*$ ). Fixing the value of the quadratic or its slope at three points completely determines the function.

**Table 1**

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

Table 1 shows the applicable consequences for each Tier I parity submeasure failure for each CLEC. In this table  $z^*$  is the (negative) balancing critical value for the submeasure, and the coefficients of the smooth consequence function are:

$$a = 5625$$

$$b = -11250$$

$$c = 8125.$$

Note that the smooth consequences formula is an explicit function of the ratio of the modified z-statistic and the balancing critical value ( $z/z^*$ ). This means that the dollar amount does not depend on the number of observations but only on the

degree of violation. If we had 100 times as many observations, with means and standard deviations staying the same, both  $z$  and  $z^*$  will increase by a factor of 10 and the consequences will be unchanged. Note also that both basic and intermediate failures are defined and may occur in the smooth region of the formula. The plan retains these designations to allow for classification of performance for more general performance monitoring such as compliance testing, if needed.

A graph of the applicable consequences as a function of the measured modified  $z$ -statistic is given in Attachment E in Figure E-1. The attachment also contains a small step tabulation of the function that approximately represents it in Table E-1.

### Examples

Three hypothetical examples of consequence calculations are given in the matrix below.

Example	$z^*$	$z$	Performance	Consequence
1	-2.00	-1.80	Compliant	\$0
2	-2.50	-3.33	Basic Failure	\$3,125
3	-3.00	-6.00	Intermediate Failure	\$8,125
4	-3.50	-12.00	Severe Failure	\$25,000

In example 1 the hypothetical balancing critical value for the submeasure is calculated to be  $-2.00$  on the basis of sample size and equal Type I and Type II error probabilities. The observed value of the modified  $z$ -statistic, based on ILEC and CLEC performance for that submeasure, is  $-1.80$ . The ILEC is compliant for this submeasure and no consequences are due to this CLEC.

Example 2 shows a balancing critical value calculated to be  $-2.50$ . Furthermore in this example, the measured value of the modified  $z$ -statistic is  $-3.33$ . This is a Basic Failure and the consequence is calculated to be \$3,125 by the formula in Table 1.

In example 3, although the hypothetical balancing critical value is  $-3.00$ , the measured value of the modified z-statistic is well below this at  $-6.00$ . According to the range of modified z-statistics in Table 1 this is an Intermediate Failure. The same smooth formula is used to calculate the remedy amount as \$8,125.

The final example 4 shows a balancing critical value of  $-3.50$ , but a very poor measured value of the modified z-statistic of  $-12.00$ . According to Table 1 this is classified as a Severe Failure and generates a consequence of \$25,000. This is the largest consequence for which the ILEC would be liable for this submeasure this month to this CLEC.

### **Tier I Business Rules for Benchmark Measurements**

#### **1. Use a "Bright Line" Test for Benchmark Measurements**

A benchmark is set to define the level of performance that is judged essential to permit competition to develop on a going-forward basis. As such, the benchmark level is at the lower range of what a viable competitive support process should be capable of delivering on a routine basis. Indeed, to assume otherwise would imply that the benchmark would not be achieved on a routine basis. In all events, because even the most tightly controlled process will produce performance outside the expected range, some margin of error is typically provided for the incumbent. Thus, the limiting performance is expressed as "B% meet or exceed the benchmark" where "B%" is a proportion figure set less than 100% in order to account for random variation considerations. Accordingly, a performance failure should be declared if the calculated performance is not equal to the "B%" level. For example, if the calculated result for a month was 94.5% of all orders completed within 3 days but the benchmark was 95% within 3 days, then a performance failure occurred. No subsequent application of a statistical test is appropriate.

## 2. Apply an Adjustment for Small Data Sets When Necessary

Because some measurement results may be calculated using small data sets, some adjustment is warranted. This need arises because the benchmark proportion for a particular measure with few underlying data points may be practically impossible to attain unless the ILEC always performs perfectly. The metric discussed in the prior paragraph can be used to illustrate the point: if only ten orders were completed in the month, then compliance would occur only if all 10 orders were (correctly) completed within three days. One order taking longer than 3 days would mean that, at best, the performance result would be 90% within 3 days, i.e., a failing performance level.

This situation is addressed through application of the following table<sup>14</sup>:

Table 2

CLEC Data Set Size	Benchmark Percentage Adjustments for Small Data Sets (Applicable to Data Sets < 30)		
	85.0%	90.0%	95.0%
5	80.0%	80.0%	80.0%
6	83.3%	83.3%	83.3%
7	85.0%	85.7%	85.7%
8	75.0%	87.5%	87.5%
9	77.8%	88.9%	88.9%
10	80.0%	90.0%	90.0%
20	85.0%	90.0%	95.0%
30	83.3%	90.0%	93.3%

## 3. Increase Consequences for Increasingly Poor Performance

As with measurements that are judged against a parity standard, those compared to a benchmark standard should be subject to additional consequences as the performance becomes increasingly worse compared to the



benchmark. The escalation is as follows (Note that "B" in Table 3, is the Benchmark Percentage as determined from Table 2):

**Table 3**

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

In Table 3 the quantity x is the actually measured proportion and the coefficients are given by:

$$d = 22500$$

$$e = -45000$$

$$f = 22500$$

$$g = 2500$$

A graph of the applicable consequences as a function of the measured benchmark result, x, for B=95% is given in Attachment E in Figure E-2. The attachment also contains a small step tabulation of the function that approximately represents it in Table E-2.

**Example:**

As an example of this consequence calculation, consider a benchmark with a proportion B=95%. Now if the measured performance is 93%, the first and

<sup>14</sup> The table can be expanded to include all possible data set sizes from 1 upward.

second columns show that this is a Basic Failure. Plugging this 2% failure of the 95% benchmark proportion into the quadratic equation of the third column in the table gives a calculated consequence of \$6,100 for this submeasure and CLEC.

Table 3 is applicable for any benchmark expressed as B% proportion better than L level, and all benchmarks may be easily expressed in this form.

### **Additional Tier I Business Rules Applicable to All Measurements**

#### **1. Increase Consequences for Chronic Performance Failures**

Regardless of the type of measurement (parity or benchmark), if performance fails to achieve the Compliant level in consecutive reporting periods, then additional consequences should apply. The recommended treatment for chronic failures is to assess a chronic failure over-ride in the third consecutive month of non-compliant performance. When the chronic failure override applies, a consequence equal to a "Severe Failure" (\$25,000 per chronic failure per month) should apply until such time as performance for the specific measurement result is again classified as Compliant.<sup>15</sup>

#### **2. No Additional Protection of the ILEC is needed through Forgiveness Mechanisms or Mitigation Methods**

Properly calibrated performance measures and balancing the probabilities of statistical errors eliminate any need for additional forms of protection for incumbents with respect to considerations of random variation.<sup>16</sup> Moreover, a

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<sup>15</sup> Alternatively, it is possible to institute consequences for repeated failures as early as the second consecutive month of failure.

<sup>16</sup> See Attachment D for further discussion of random variation and the inappropriateness of providing further mitigation if Type I and Type II error is balanced as recommended in this proposal.

procedural cap such as the one described below should allay any fears that additional protections are necessary for the ILEC.<sup>17</sup>

## **Tier II**

Tier II consequences are intended to enhance the ILEC's incentives to provide performance that complies with its statutory obligations. Tier I consequences only compensate individual CLECs who actually receive discriminatory treatment from the ILEC. Tier II consequences are designed to counterbalance the ILEC's incentive to damage not just individual firms but the competitive marketplace itself. Thus, the two types of consequences are complementary, and both are necessary to achieve the intended results.

The applicability of Tier II consequences should be determined using the aggregate data for all CLECs within a particular submeasurement result and disaggregation.<sup>18</sup> Except as noted below, identical business rules and measurements should be utilized as for Tier I. Thus, virtually the same data and computational processes can be utilized for both tiers. The differences are highlighted below and are due largely to a reduction of the consequence threshold below the balancing critical value. The smaller threshold is recommended because higher consequences are proposed, so the confidence in the decision to apply a consequence should be greater.

Because Tier II consequences reflect harm to the public interest in a competitive marketplace, consequences under Tier II, unlike Tier I payments, should be paid

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<sup>17</sup> Because the rationale for providing consequence offsets is the possibility of random variation, there is no justification for applying offsets to measurements that are monitored through the use of benchmarks. As explained above, random variability impacts are fully cared for in the structure of the benchmark standard, by permitting in advance a percentage of performance "misses."

<sup>18</sup> Each occurrence counts equally in this calculation. Thus, the individual results for individual CLECs are not averaged together; rather the performance for all CLECs is

to a public fund identified by the Commission and may be used for competitively neutral public purposes.<sup>19</sup>

**Tier II Business Rules for Parity Measurements.**

The same business rules apply under Tier II to the aggregate (or pooled) data of the individual CLECs as are employed for the individual CLEC data under Tier I, except a smaller consequence threshold is used. As a result, the applicable consequence table (Table 1 above) is modified as follows:

**Table 4**

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	$n25,000$

Here  $z^*$  is the balancing critical value for the given submeasure aggregated over all the CLECs, and the coefficients of the smooth consequence function are again:

$a = 5625$

$b = -11250$

$c = 8125.$

The quantity  $n$  is the market penetration factor explained below.

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pooled for each submeasurement result. Thus the pooled data analysis effectively creates a "super CLEC" for the purposes of determining Tier II consequences.

<sup>19</sup> Thus, under Tier II, individual CLECs are not compensated.

A graph of the applicable consequences as a function of the measured modified z-score (z) is given in Attachment E in Figure E-3. The attachment also contains a small step tabulation of the function that approximately represents it in Table E-3.

**Tier II Business Rules for Benchmark Measurements**

The same business rules apply under Tier II to the aggregate (or pooled) data of the individual CLECs as are employed for the individual CLEC data under Tier I, except that consequences do not apply until the pooled CLEC performance results degrades to a point that is equivalent to an intermediate failure designation at the Tier I level. As with parity measures, the applicable consequences are adjusted to reflect the broader consequences of poor performance for the entire CLEC industry and the concomitant effects on the market and consumers.

**Table 5**

<b>Range of Benchmark Result (x)</b>	<b>Failure Designation</b>	<b>Applicable Consequence (\$)</b>
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

For Table 5, x is the actually measured proportion and the coefficients are again given by:

$$d = 22500$$

$$e = -45000$$

$$f = 22500$$

$$g = 2500$$

The quantity n is the market penetration factor explained below.

A graph of the applicable consequences as a function of the measured benchmark result, x, for B=95% and n=10 is given in Attachment E in Figure E-4. The attachment also contains a small step tabulation of the function that approximately represents it in Table E-4.

#### **Establishing the Value of "n" for Tier II**

For both Tier II tables (Tables 4 and 5), the value for "n" should be determined based upon the most recent data for the state and company under consideration (in this case Mississippi) relating to resold lines (Table 3.1) and UNE loops (Table 3.3) as reported in the most recent Report of Local Competition published by the FCC.<sup>20</sup> In effect, "n" is a multiplier for the Tier II consequence amount that takes into account, in general terms, the extent of competitive penetration within the state.<sup>21</sup>

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<sup>20</sup> If a company is not explicitly identified, then the aggregate result for the state would be utilized

<sup>21</sup> The calculation for a particular ILEC and state would be based on the most current data reported to the FCC and be as follows: (resold lines + UNE loops)/(total switched lines).

**Table 6**

<b>Lines provided to CLECs/Total ILEC and CLEC Lines</b>	<b>Value of "n"</b>
more than 50%	0
more than 40% to less than or equal 50%	1
more than 30% to less than or equal 40%	2
more than 20% to less than or equal 30%	4
more than 10% to less than or equal 20%	6
more than 5% to less than or equal 10%	8
0% to less than or equal 5%	10

Thus, as competition becomes established, the size of the applicable Tier II consequence is reduced to zero if the ILEC no longer provides a majority of the local lines to the CLECs in its serving area.

**Other Considerations**

**1. Procedural Caps May Be Useful If Properly Implemented**

In the course of early state consideration of consequence plans, regulators and incumbents expressed concern regarding the possible size of payments that an incumbent might be required to pay. In response, proposals were made to cap incumbents' potential liability. As a threshold matter, it should be noted that this concern reflects a tacit acknowledgement that the performance delivered by the incumbents has to date been largely non-complaint. Moreover, to the extent that any cap is considered at all, the very important difference between absolute and procedural caps must be recognized. As shown below, if the Commission

establishes any caps at all, they should be purely procedural and not place an absolute limit on the potential consequence payments due from the ILEC.<sup>22</sup>

The difference between procedural and absolute caps is significant. Absolute caps should be avoided entirely. First, such caps provide an ILEC with the means to evaluate the cost of market share retention through delivery of non-compliant performance. Second, absolute caps send the signal that once the ILEC's performance deteriorates to a particular level (i.e., reaching the absolute cap) then further deterioration is irrelevant.<sup>23</sup>

Procedural caps, on the other hand, establish a preset level at which the ILEC could seek regulatory review of the consequences that are due; however, the cap would not automatically absolve an ILEC of liability for a consequence. Procedural caps, therefore, avoid both of the problems of absolute caps. They do not provide ILECs with the opportunity to evaluate the "cost" of retaining share through non-compliance. Likewise, they do not absolve an ILEC from consequences for unchecked performance deterioration.

To the extent a procedural cap is employed, it should be tailored to achieve the following:

- (1) A meaningful level of consequences must be available before the procedural cap applies;
- (2) The procedural cap should apply on a rolling twelve-month period and not to individual months;

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<sup>22</sup> In this regard, it should be noted that the main purpose of any system of incentives is to have an ILEC accept its legal responsibility to perform at appropriate levels and not pay any consequences at all.

<sup>23</sup> Similarly, the use of weightings for individual performance measurements to determine the amount of consequences should also be avoided. Any weighting process is inherently subjective and thus arbitrary. Moreover, use of weightings may inappropriately influence the market entry mode selected by a particular CLEC. It is far superior to permit the



- (3) The procedural cap should not apply to Tier I consequences for the CLECs but only Tier II consequences.<sup>24</sup> No other caps should be applicable.
- (4) To the extent that a procedural cap is exceeded, the ILEC must pay out consequences up to the procedural cap and put the amount in excess of the cap in an escrow account that earns a minimum interest rate as approved by the Commission;
- (5) The Commission shall decide whether and to what extent the amount in excess of the procedural cap should be paid out. The ILEC should pay out any amount in excess of the cap, including accrued interest, according to Commission order.

The level of the procedural cap must be set high enough that meaningful incentives are immediately payable without intervention of the Commission. To permit otherwise would effectively prevent the performance consequences from being self-enforcing. It is reasonable to expect that any procedural cap should be proportionate to the size of the local market at issue. It is therefore recommended that, if a procedural cap is adopted, that it be determined from the estimated dollar amount that the ILEC stands to retain in monopoly based revenues.

## **2. Other Provisions Protect ILECs From The Impact Of Extraordinary Events**

The cut of a single cable may result in higher trouble rates and longer mean times to repair over a short period of time. This is referred to as clustering. While clustering may in fact occur, there is no particular reason to believe that

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market to determine which measures are most important by seeing what functions customers need from CLECs, and that CLECs in turn need from the ILEC.

<sup>24</sup> As noted above, Tier I consequences principally act as a form of liquidated damages. Thus, there is no justification for capping such consequences whether for an individual CLEC or for the CLEC industry as a whole.

any such events would result in disproportionate impacts on the ILEC or even the CLECs. Furthermore, there may be other events demonstrably beyond the control of the ILEC that may affect its service quality differently from the CLECs'. This condition does not argue that automatic exclusion should be provided for an otherwise applicable consequence. Nevertheless, the ILEC should not be denied protection from extraordinary impacts not anticipated in the construction of the consequence plan<sup>25</sup>. As a result, if such events occur, the ILEC should be permitted to pursue relief according to the following:

- (1) The ILEC should notify the Commission and any potentially affected CLEC(s), using written and verifiable means of notice, of the intent to pursue an exception. Such notification must be provided before the applicable consequence is payable; otherwise the ILEC waives its rights.
- (2) All consequences not at issue under the exception petition must be immediately payable as provided for elsewhere in the plan. Those that are subject of the potential exemption shall be paid into an interest bearing escrow account no later than the due date applicable to the consequences that are at issue.
- (3) No later than 15 calendar days following the due date of the consequences for which an exemption is sought, the incumbent shall submit to the Commission and all other affected parties all factual evidence supporting the exemption. To the extent the ILEC seeks proprietary protection of the information submitted, it

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<sup>25</sup> Root cause analysis should not defer payments of consequences. ILECs must be liable to pay any consequences for poor performance. Completion of root cause analysis must not be a prerequisite for the delivery of payments to either the CLEC(s) or to the designated Tier II fund. Root cause analyses tend to be time consuming to conduct. While root cause analysis is desirable for long range performance improvement purposes, it is antithetical to self-enforcing consequences. Finally, the provisions set forth in the immediately preceding section provide a procedural mechanism available to ILECs should after-the-fact root cause analysis indicate that a consequence was misapplied from the ILEC's perspective.

shall employ a standard nondisclosure form, approved by the Commission, before the plan is put into operation. The ILEC may not rely upon the lack of the proprietary form as a basis to delay the submission to the Commission, nor may the incumbent delay access to information by any CLEC that agrees to sign the standard nondisclosure form.

(4) By the later of 30 calendar days following notice by the incumbent or 15 calendar days following the ILEC's compliance with (3) above, interested CLECs shall file comments regarding the requested exemption. By mutual agreement, this period may be extended up to 15 calendar days.

(5) Following closure of the comment period provided in (4), if the ILEC and CLEC(s) have not reached a mutually agreeable settlement, the Commission shall either

- (a) render a decision regarding the requested exemption, or
- (b) seek further comment. The Commission shall render its decision regarding the exemption, which shall be binding on all parties, within 90 calendar days of the payment due date of the consequences at issue.

(6) Payout of the consequences shall be according to Commission direction and liquidate the entire escrow account, including accrued interest. In addition, the ILEC should be responsible for reimbursing reasonably incurred legal fees of the CLECs. Such amounts should be reimbursed in the following proportion:

$$[1 - (\text{amount returned to the incumbent})] / \text{total escrow balance at liquidation.}$$

As discussed in Attachment D, other steps may be taken to address potential measurement correlation issues once actual data has been gathered under the performance measurement system.

### **3. Additional Consequences Enforce the Operation of the Plan**

Additional consequences should be applicable for other ILEC failures related to performance reporting. At a minimum, consequences for the following areas of non-compliance are appropriate:

Late performance reports - If performance data and associated reports are not available to the CLECs by the due day, the ILEC should be liable for payments of \$5,000 to a state fund for every day past the due date for delivery of the reports and data. The ILEC's liability should be determined based on the latest report delivered to a CLEC.

Incomplete or revised reports - If performance data and reports are incomplete, or if previously reported data are revised, then the ILEC should be liable for payments of \$1,000 to a state fund for every day past the due date for delivery of the original reports.

Inability to access detailed data - If a CLEC cannot access its detailed data underlying the ILEC's performance reports due to failures under the control of the ILEC, then the ILEC should pay the affected CLEC \$1000 per day (or portion thereof) until such data are made available.

Interest on late consequence payments - If the ILEC fails to remit a consequence payment by the 15<sup>th</sup> business day following the due date of the data and the reports upon which the consequences are based, then it should be liable for accrued interest for every day that the payment is late. A per diem interest rate that is equivalent to the ILEC's rate of return for its regulated services for the most recent reporting year should apply.

## Attachment A

### Sufficient Disaggregation Is Essential to Permit Detection of Discrimination

A meaningful system of performance consequences cannot operate without a high-quality system of performance measurements. This requires not only a robust system of performance measurements that monitors all key aspects of market entry and ILEC support but also that the results derived from such measurements are sufficiently discrete to permit meaningful comparisons.<sup>26</sup>

Sufficient disaggregation is absolutely essential for accurate comparison of results to expected performance. This is true regardless of whether parity or a benchmark serves as the performance standard. Inadequate disaggregation of results means that not all key factors driving differences in performance results have been identified, which in turn interjects needless variability into the computed results. Such an outcome has two adverse effects. First, the ability to detect real differences is reduced for parity measures, because the modified z-statistic employs only the incumbent's variance in the denominator, which will increase with inappropriate averaging of dissimilar results (thus causing the calculated z-statistic to be smaller). Second, benchmark standards may be more permissive, both in terms of the absolute standard and the percentage "miss" accepted (to the extent it is factually supported at all), if the factual data underlying them are averages of widely divergent processes. Accordingly, inadequately disaggregated data impose very lenient targets that result in a very low probability that performance requirements will be missed.

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<sup>26</sup> Although some incumbents have raised vague concerns that sufficient disaggregation of results may over-burden regulators, those concerns are unfounded for two reasons. First, careful advance specification of disaggregation requirements will reduce, rather than increase, regulatory burden and permit superior quality decision making. Second, if fewer performance results are desired, statistical procedures for re-aggregating disaggregated results provide a superior approach to reliance upon overly aggregated measurement results.

Only incumbents, such as BellSouth, have access to the highly detailed information regarding their retail performance necessary to determine the level of disaggregation that is required to permit apples-to-apples comparisons. Moreover, there are analytical procedures that allow factual conclusions to be made regarding how much disaggregation is "enough."<sup>27</sup> Indeed, in the limited instances where CLECs have been provided access to ILEC data and at least limited public disclosure of analysis was permitted, the facts showed both that ILECs have very detailed data and that very disaggregated results comparisons are necessary to avoid bias.<sup>28</sup>

Establishing the appropriate level of disaggregation is not a "once-and-done" undertaking. Provision can be made to review, perhaps annually, the appropriateness of the disaggregation contained in the ILEC's performance measurement system. In this review process, an ILEC may demonstrate, through data it has collected pursuant to its performance measurement system, that the existing level of disaggregation is not providing any additional insight to an assessment of its performance quality and nondiscrimination. In that same review process, individual CLECs should also be permitted to request additional disaggregation.<sup>29</sup> The party requesting a change should have the burden of showing why the proposed change is appropriate provided that all parties have equal access to detailed data necessary to support the proposal.

There should not be any presumption that additional disaggregation creates a burden, for either the ILEC or this Commission. For all incumbents in general, additional disaggregation (once correct implementation is validated) simply involves repetitive computation -- a task readily and quickly accomplished by today's computers. Such a small and largely one-time effort is a small price to

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<sup>27</sup> For example, regression procedures may provide a workable methodology for establishing the extent of disaggregation required to make accurate comparisons.

<sup>28</sup> See AT&T Ex Parte filed July 20, 1999 in CC Docket 98-56.

<sup>29</sup> In such cases, the requesting CLEC should be required to make its request for further disaggregation to the incumbent ILEC at least three months before initiation of the review process.

pay for the vastly improved capability to protect the prospects for competition in Mississippi.







**Attachment B**  
**Permutation Analysis Procedural Steps**

Permutation analysis is applied to calculate the z-statistic using the following logic:

1. Choose a sufficiently large number  $T$ .
2. Pool and mix the CLEC and ILEC data sets
3. Randomly subdivide the pooled data sets into two pools, one the same size as the original CLEC data set ( $n_{CLEC}$ ) and one reflecting the remaining data points, (which is equal to the size of the original ILEC data set or  $n_{ILEC}$ ).
4. Compute and store the Z-test score ( $Z_S$ ) for this sample.
5. Repeat steps 3 and 4 for the remaining  $T-1$  sample pairs to be analyzed. (If the number of possibilities is less than 1 million, include a programmatic check to prevent drawing the same pair of samples more than once).
6. Order the  $Z_S$  results computed and stored in step 4 from lowest to highest.
7. Compute the Z-test score for the original two data sets and find its rank in the ordering determined in step 6.

8. Repeat the steps 2-7 ten times and combine the results to determine  $P =$  (Summation of ranks in each of the 10 runs divided by  $10T$ ) :
9. Using a cumulative standard normal distribution table, find the value  $Z_A$  such that the probability (or cumulative area under the standard normal curve) is equal to  $P$  calculated in step 8.
10. Compare  $Z_A$  with the desired critical value as determined from the critical  $Z$  table. If  $Z_A >$  the designated critical  $Z$ -value in the table, then the performance is non-compliant.



## **Attachment C**

### **Mitigation for Potential Impacts of Random Variation is Unnecessary When Type I and Type II Error is Balanced**

Random variation is differences in the expected output (or result) of a process that cannot be entirely explained as a result of differences in the inputs to the process. Said another way, running the very same process multiple times using exactly the same key inputs may not (and likely will not) produce exactly the same outcomes. The differences in the outcomes are “explained” as random variation.

There is little debate that the support processes that incumbents utilize to support CLECs tend to be complex and that a variety of factors influence the quantity and quality of the support delivered. As a result, provided the necessary steps have been taken to disaggregate measurement results sufficiently to account for factors correlated with different outcomes, random variation should be accommodated. In doing so, a reasonable balance needs to be struck between (1) protecting the ILEC from consequences that are a result of random variation, and (2) protecting competitors from the adverse effects of discrimination by the ILEC.

As discussed above, the first step in mitigating the effects of random variation is to minimize the risk of making an incorrect decision. In this situation, the two potential incorrect decisions are (1) declaring performance compliant when it is actually discriminatory and (2) declaring performance non-compliant when it is actually within acceptable limits. If these two probabilities are balanced, then, the consequences for “false” failures conceptually offset the consequences for undetected failures. Otherwise stated, the small remedy payment by the ILEC under falsely declared non-compliance is conceptually balanced with the market losses experienced by the CLECs due to falsely declared compliance.

Some regulators have expressed concerns, in light of what they consider to be sizable consequences necessary to motivate compliant ILEC performance and the inability to precisely balance risk, that additional mitigating factors should be instituted. Unfortunately, virtually all the mechanisms discussed are designed to protect the incumbent at the expense of the protecting the competitive process. One mechanism proposed is an absolute cap., but it suffers from serious flaws.

#### **a. Absolute Caps On Liability Are Unwarranted**

There is no logical or practical basis to set an absolute limit on any incumbent's liability under any consequences plan, especially for Tier I type consequences. Such consequences are intended to compensate CLECs for actual harm they have sustained as a result of documented poor performance. Thus, there should never be a limit on this type of consequence. Moreover, to the extent that Tier II consequences become especially large, it may be appropriate to establish a procedural cap to provide an opportunity to assess whether the calculated consequence for an incumbent's market-affecting behavior should be limited.

## **Attachment D**

### **Addressing Measurement Overlap And Correlation**

Measurement overlap occurs when one or more measurements effectively measure the same performance. If two measurements overlap, then consequences should attach to only one of them. Note, however, a measurement addressing timeliness and a measurement addressing quality for the same area of performance do not overlap.

Measurement correlation is different from measurement overlap. Measurement correlation occurs when one or more measurement results move at the same time. The direction of movement need not be the same. That is, one may improve (e.g., quality) while another deteriorates (e.g., timeliness). As such, measurement correlation does not automatically argue for adjustment to the measurements eligible for consequences. Indeed, an incumbent that is intentionally and pervasively discriminating would be capable of showing a high degree of correlation among all measurement results both within and across months – all results would be deteriorating.

If there are reasons to believe that measurements are somewhat overlapping and correlation is suspected, the solution is not to immediately eliminate one or both measurements. Rather the potentially superior approach is to create “families” for the purpose of applying consequences. Each measurement “family” would be eligible for only a single consequence. Whether and to what degree a family is eligible for a consequence would be determined by the worst performing individual measurement result within the family for the month under consideration. Thus, use of measurement families eliminates the possibility of consequence “double jeopardy”<sup>30</sup> without making any advance value judgement regarding the usefulness of individual measurements.

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<sup>30</sup> If the measurements in the family are truly overlapping and correlated they point to the same conclusion (incidents of failure and severity). Measurement families thus treat the

Use of measurement families has the potential for significant harm for an otherwise effective consequence plan due because: (1) inappropriate grouping can mask areas of discrimination by placing non-overlapped measurements in the same family; and, (2) by reducing eligible measurements, without adjusting the per measurement consequence, the overall plan incentives are diminished. As a result, establishment of measurement families must be approached with extreme caution and sparingly used. At least the following conditions must be imposed.

- (1) measurements that address separate support functionality may not be placed in the same family;
- (2) measurements that address different modes of market entry may not be placed in the same family;
- (3) measurement families may not be used as a means to avoid disaggregation detail;
- (4) measurements that address (a) timeliness, (b) accuracy, and (c) completeness may not be placed within the same family;
- (5) measurement families, to the extent used, must be identical across all CLECs;
- (6) even if correlation can be demonstrated, measurement families must not be used to combine otherwise independent measurements of a deficient process; and,
- (7) establishment of measurement families must not reduce the maximum consequence payable by more than 10% without an offsetting increase in the basic, intermediate, and severe consequence payable per failed measurement.

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incumbent preferentially; either the measurements are effectively the same and only one consequence applies or they were inappropriately grouped and the incumbent avoids one or more consequences that should have been incurred.



To the extent new measurement families are proposed or a proposal is set forth to eliminate or modify an existing family, the advocate of the change should bear the burden of demonstrating compliance with the above minimum requirements. The consideration should be in a public forum where all interested parties participate, and in the event of a disagreement, the Commission should decide based upon the record established. Prospective changes of measurement families should not affect any prior determinations regarding consequences.

No proposal to establish measurement families should be considered until the consequence plan has been operational and produced at least six months of independently verified data.

## **Attachment E**

### **Graphs and Tables of Consequence Functions**

The consequences as a function of performance are completely calculable from the equations presented in Tables 1,3,4, and 5 of the text. In fact using the equations in these tables directly is the appropriate way to program the computer that will perform the calculations when the plan is implemented. However, in this attachment we give graphical representations of the consequences as a function of performance and also present the functions in tabular form. The latter may be used as a less accurate alternative to the equations in the text tables to look up the consequence amounts.

Applicable Consequences for Tier I Parity Submeasures

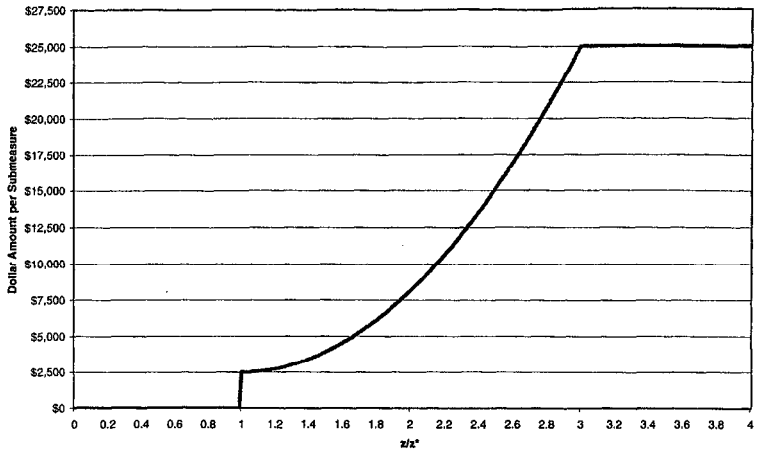


Figure E-1

Table E-1 Applicable Tier I Consequences for Parity Submeasures

<b>z/z*</b>	<b>Amount</b>
0.0 or less	\$0.00
0.1	\$0.00
0.2	\$0.00
0.3	\$0.00
0.4	\$0.00
0.5	\$0.00
0.6	\$0.00
0.7	\$0.00
0.8	\$0.00
0.9	\$0.00
1.0	\$0.00
1.1	\$2,556.25
1.2	\$2,725.00
1.3	\$3,006.25
1.4	\$3,400.00
1.5	\$3,906.25
1.6	\$4,525.00
1.7	\$5,256.25
1.8	\$6,100.00
1.9	\$7,056.25
2.0	\$8,125.00
2.1	\$9,306.25
2.2	\$10,600.00
2.3	\$12,006.25
2.4	\$13,525.00
2.5	\$15,156.25
2.6	\$16,900.00
2.7	\$18,756.25
2.8	\$20,725.00
2.9	\$22,806.25
3.0 or more	\$25,000.00

Applicable Consequences for Tier I (95%) Benchmark Submeasures

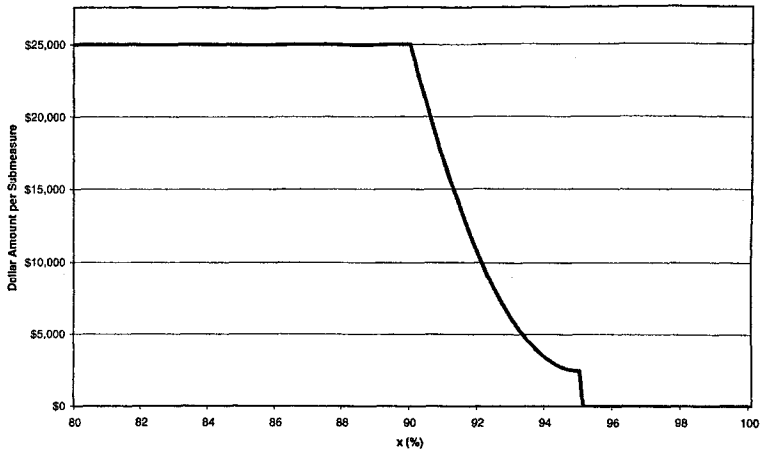


Figure E-2

Table E-2 Applicable Tier I Consequences for (95%) Benchmark Submeasures

<b>x (%)</b>	<b>Amount</b>
90.0 or less	\$25,000.00
90.5	\$20,725.00
91.0	\$16,900.00
91.5	\$13,525.00
92.0	\$10,600.00
92.5	\$8,125.00
93.0	\$6,100.00
93.5	\$4,525.00
94.0	\$3,400.00
94.5	\$2,725.00
95.0	\$0.00
95.5	\$0.00
96.0	\$0.00
96.5	\$0.00
97.0	\$0.00
97.5	\$0.00
98.0	\$0.00
98.5	\$0.00
99.0	\$0.00
99.5	\$0.00
100.0	\$0.00

Applicable Consequences for Tier II Parity Submeasures (n=10)

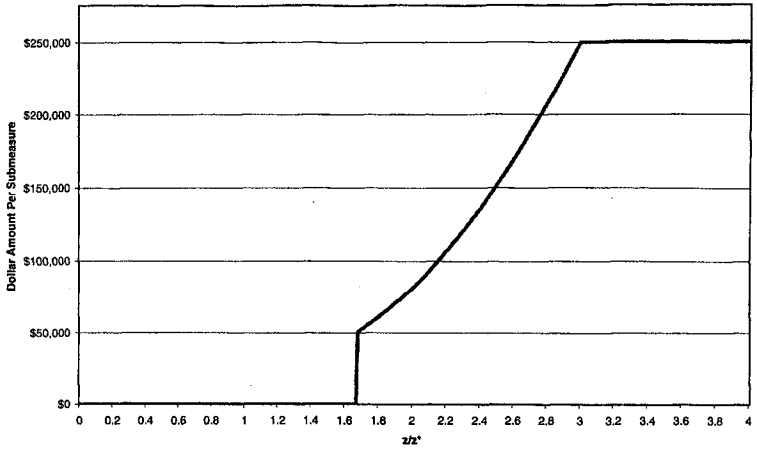


Figure E-3

**Table E-3 Applicable Tier II Consequences for Parity Submeasures (n=10)**

<b>z/z*</b>	<b>Amount</b>
0.0 or less	\$0.00
0.1	\$0.00
0.2	\$0.00
0.3	\$0.00
0.4	\$0.00
0.5	\$0.00
0.6	\$0.00
0.7	\$0.00
0.8	\$0.00
0.9	\$0.00
1.0	\$0.00
1.1	\$0.00
1.2	\$0.00
1.3	\$0.00
1.4	\$0.00
1.5	\$0.00
1.6	\$0.00
1.7	\$52,562.50
1.8	\$61,000.00
1.9	\$70,562.50
2.0	\$81,250.00
2.1	\$93,062.50
2.2	\$106,000.00
2.3	\$120,062.50
2.4	\$135,250.00
2.5	\$151,562.50
2.6	\$169,000.00
2.7	\$187,562.50
2.8	\$207,250.00
2.9	\$228,062.50
3.0 or more	\$250,000.00



Applicable Consequences for Tier II (95%) Benchmark Submeasures (n=10)

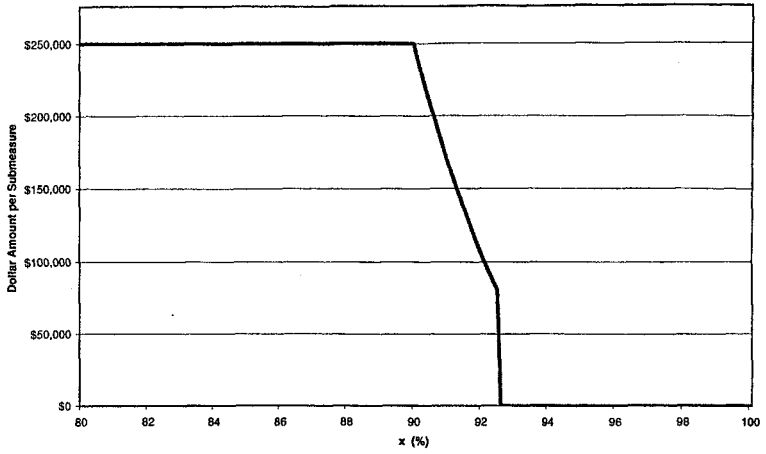


Figure E-4

Table E-4 Applicable Tier II Consequences for (95%) Benchmark Submeasures  
(n=10)

<b>x (%)</b>	<b>Amount</b>
90.0 or less	\$250,000.00
90.5	\$207,250.00
91.0	\$169,000.00
91.5	\$135,250.00
92.0	\$106,000.00
92.5	\$0.00
93.0	\$0.00
93.5	\$0.00
94.0	\$0.00
94.5	\$0.00
95.0	\$0.00
95.5	\$0.00
96.0	\$0.00
96.5	\$0.00
97.0	\$0.00
97.5	\$0.00
98.0	\$0.00
98.5	\$0.00
99.0	\$0.00
99.5	\$0.00
100.0	\$0.00

**Exhibit CLB-2**  
**Benchmark Adjustment Table**

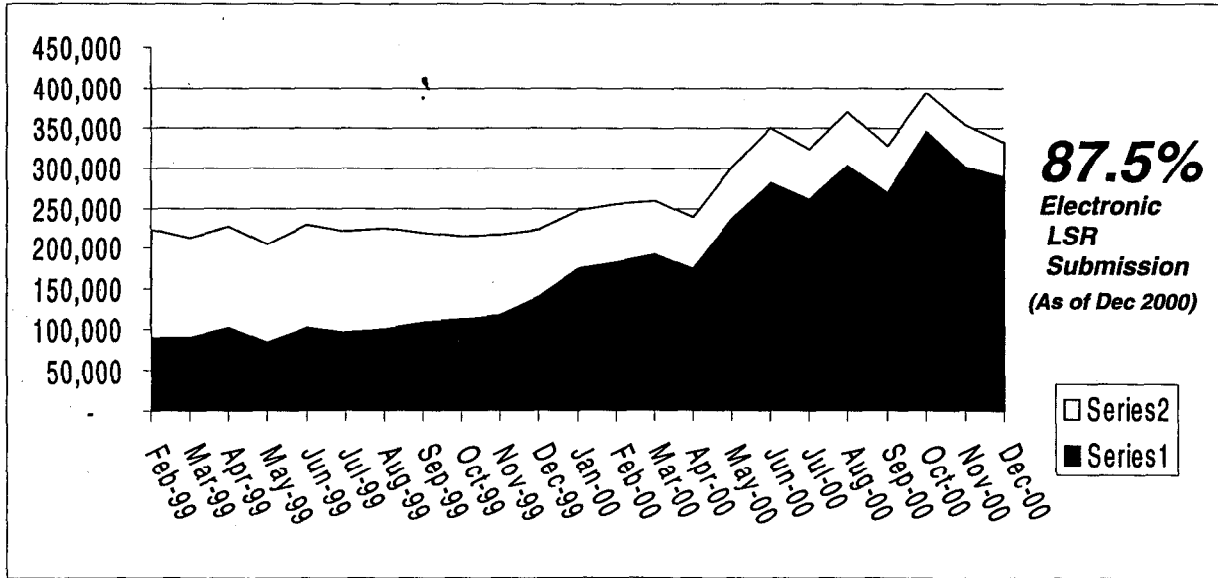
## Sample Benchmark Adjustment Table

CLEC Data Set Size	Benchmark Percentage Adjustments for Small Data Sets (Applicable to Data Sets < 30)		
	85.0%	90.0%	95.0%
5	80.0%	80.0%	80.0%
6	83.3%	83.3%	83.3%
7	85.0%	85.7%	85.7%
8	75.0%	87.5%	87.5%
9	77.8%	88.9%	88.9%
10	80.0%	90.0%	90.0%
20	85.0%	90.0%	95.0%
30	83.3%	90.0%	93.3%

Exhibit CLB-3  
Testimony of Ronald M. Pate, Exhibit 45, North Carolina  
Utilities Commission, Docket P-55, Sub 1022, April 12, 2001

# LSR SUBMISSIONS

OSS-45



# LSR SUBMISSIONS

## Supporting Data

Month	Electronic	Manual	TOTAL	Elec %	Manual %
Jan-99	75,625	140,124	215,749	35.1%	64.9%
Feb-99	91,051	131,655	222,706	40.9%	59.1%
Mar-99	90,632	121,416	212,048	42.7%	57.3%
Apr-99	102,301	124,015	226,316	45.2%	54.8%
May-99	83,814	120,582	204,396	41.0%	59.0%
Jun-99	102,743	126,919	229,662	44.7%	55.3%
Jul-99	96,589	123,750	220,339	43.8%	56.2%
Aug-99	100,203	124,135	224,338	44.7%	55.3%
Sep-99	107,766	110,761	218,527	49.3%	50.7%
Oct-99	111,518	103,123	214,641	52.0%	48.0%
Nov-99	119,035	98,805	217,840	54.6%	45.4%
Dec-99	141,357	82,093	223,450	63.3%	36.7%
Jan-00	174,336	73,152	247,488	70.4%	29.6%
Feb-00	178,745	71,815	250,560	71.3%	28.7%
Mar-00	193,079	65,989	259,068	74.5%	25.5%
Apr-00	175,396	63,315	238,711	73.5%	26.5%
May-00	236,127	66,065	302,192	78.1%	21.9%
Jun-00	280,567	68,509	349,076	80.4%	19.6%
Jul-00	260,965	62,697	323,662	80.6%	19.4%
Aug-00	302,542	67,098	369,640	81.8%	18.2%
Sep-00	270,126	57,143	327,269	82.5%	17.5%
Oct-00	345,834	47,961	393,795	87.8%	12.2%
Nov-00	302,045	51,192	353,237	85.5%	14.5%
Dec-00	289,548	41,540	331,088	87.5%	12.5%