COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION CONCERNING THE PROPRIETY OF INTERLATA SERVICES BY BELLSOUTH TELECOMMUNICATIONS, INC., PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996	))))	Case No.: 2001-00105

PETITION OF BELLSOUTH TELECOMMUNICATIONS, INC. FOR THE ESTABLISHMENT OF A NEW PERFORMANCE PLAN

Pursuant to the Order issued in this case on May 11, 2004, and other applicable law, BellSouth Telecommunications, Inc., ("BellSouth"), by and though its undersigned counsel, respectfully petitions the Kentucky Public Service Commission ("Commission") to implement a new performance assessment plan for BellSouth in Kentucky. The Commission should adopt a new performance assessment plan that effectively ensures BellSouth's performance is at a satisfactory and nondiscriminatory level and that establishes penalties rationally related to the level of BellSouth's performance.

The present performance assessment plan ("Current Plan"), originally established by this Commission in connection with BellSouth's application for long distance service (pursuant to Section 271 of the Telecommunications Act of 1996 (the "Act")) was originally adopted to ensure BellSouth continued to provide nondiscriminatory unbundled access, interconnection and resale to competitive local exchange carriers ("CLECs") and was developed at an earlier stage in the competitive process in an environment with little experience with such measurements and penalties. Unfortunately, the Current Plan has become bogged down with problems, including: numerous submetrics that measure little, if any, actual CLEC activity; measurements that penalize BellSouth repeatedly for the same failures; and measurements that create excessive penalties wholly disproportionate to minor and insignificant performance "misses."

BellSouth's current overall performance level is at or above BellSouth's performance in 2002 which was found by the Federal Communications Commission ("FCC") to be satisfactory to authorize long distance relief (BellSouth's overall performance for January, 2002 through June, 2002 was at 88%). Nevertheless, with performance better than in 2002 (BellSouth's overall performance for September, 2003 through April, 2004, was over 89%.) BellSouth paid nearly $400,000 in performance-related penalties to CLECs (i.e. Tier-1 payments) in Kentucky for the first five months of this year. The Current Plan results in penalties wholly inconsistent with the high level of performance BellSouth is providing to CLECs and their customers. Accordingly, BellSouth submits the attached proposed performance assessment plan to better capture those measurements appropriate for tracking nondiscriminatory unbundled access, interconnection and resale to CLECs and to establish rationally related penalties for failures to meet those obligations.

In support of this Petition, BellSouth states the following:

I. BACKGROUND AND DISCUSSION OF KEY MEASURMENT TERMS

1. As an incumbent local exchange carrier ("ILEC"), BellSouth has certain obligations under Section 251(c) of the Act, including an obligation to provide CLECs with interconnection, access to unbundled network elements ("UNEs"), resale, and collocation, pursuant to rates, terms, and conditions that are just, reasonable, and nondiscriminatory. To demonstrate compliance with Section 251(c), BellSouth (like all ILECs) developed a performance assessment plan. The plan was not developed in isolation. Rather, BellSouth's performance assessment plan was developed though a combination of a collaborative process

(numerous workshops) and adversarial proceedings (several state commission hearings). Various versions of BellSouth's performance assessment plan were adopted in the states where BellSouth provides local exchange service.

2. On October 19, 2001, this Commission adopted, with one exception,[1] the performance assessment plan developed by the Georgia Public Service Commission. The plan developed in Georgia (and adopted in Kentucky) consists of two parts: a Service Quality Measurement Plan ("SQM" or "SQM plan") and its Self-Effectuating Enforcement Mechanism Administrative Plan ("SEEM" or "SEEM plan"). The SQM plan contains, among other things, business rules, performance measures, performance submeasures, and exceptions to such measures. The SEEM plan includes, among other things, the fees BellSouth must pay for failing to meet the performance standards for certain SQM measures (or submeasures). Tier-1 payments are paid to a CLEC and Tier-2 payments are paid to the General Fund for the Commonwealth.

3. Throughout this Petition, certain key terms that have unique meaning in the context of performance measurement plans will be repeatedly used, and thus for the Commission's convenience they are discussed here. The SQM specifies the method for calculating data and measuring performance. Data is reported on many different functions that BellSouth performs for CLECs. Each unique function is identified as a measure (or metric) in the SQM, and there are 81 such measures in the measurement plan currently in effect in Kentucky.[2] The term "SQM measure" refers to one or more of these 81 measures. Percent

---

[1] Given concerns expressed over the measurement for local number portability ("LNP") Disconnect Timeliness, the Commission deferred ruling on an appropriate penalty for missing the LNP Disconnect Timeliness measure. October 19, 2001 Order, at p.2.

[2] The SQM and SEEM plans discussed in this Petition are the plans ordered by this Commission in this docket in the Order dated October 19, 2001, On or about August 1, 2004, BellSouth implemented a new SQM and SEEM plans in accordance with Commission Orders in this docket dated May 11, 2004, and June 14, 2004. In the 2004 Orders, the Commission ordered BellSouth to implement the current Georgia SQM and SEEM plans.

Missed Installation Appointments is an example of an SQM measure. However, data is not typically reported on a consolidated basis for all instances where performance is recorded for a measure. Instead, the data is reported for individual subgroups of activity within a measure. The process for establishing these subgroups is called disaggregation and the description of each subgroup is identified within that SQM measure. With full disaggregation for items such as products, dispatch type, and volume, these 81 SQM measures "balloon" into over **1,800** reported measurements.[3] Each of these measurements (or data points) is referred to either as a submetric or a submeasure. Percent Missed Installation Appointments for Loop/Port Combinations on orders with less than 10 circuits where a technician was dispatched to the CLEC customer's premises is an example of a submetric or submeasure. In most cases, data is reported for the aggregate of all CLECs and for each CLEC individually, so the amount of data reported is enormous.

4. Another frequently used term is SEEM. SEEM payments (or penalties) are determined separately for individual groupings of those SQM submetrics where penalties apply. These individual groupings, set forth in the SEEM plan, are referred to as SEEM submetrics (or measures), and there are 67 such SEEM submetrics in the Current Plan at the Tier-1 level (for each CLEC) and 98 submetrics in the Current Plan at the Tier-2 level, applicable to the CLEC industry.[4]

5. In the Order issued May 11, 2004, the Commission made several rulings regarding the Current Plan, including a ruling that "[n]othing contained herein precludes BellSouth from

---

[3] Statewide or regionwide results are reported on 1,808 submetrics.

[4] The number of SEEM submetrics is less than the SQM submetrics because not all SQM measurements have penalties associated with such measures. Additionally, for those SQM submetrics that are included in SEEM, some combining of SQM submetrics occurs.

submitting a proposal for a Kentucky-specific performance plan and associated penalties as described infra." Order at p. 10. In accordance with such ruling, BellSouth respectfully submits a proposed performance assessment plan comprised of two familiar parts: SQM and SEEM plans. The proposed SQM is a comprehensive compilation of relevant performance measurements with appropriate retail analogs and benchmarks. The proposed SEEM is an enforcement mechanism plan that will generate more rational remedy payments to be paid in the event BellSouth fails to provide CLECs with a level of service that complies with the SQM, that is, service comparable to BellSouth's own retail operation or service that meets established benchmarks. Taken together, the proposed SQM and SEEM plans will provide the Commission with an improved performance measurement and enforcement mechanism for determining whether BellSouth continues to meet the Act's nondiscriminatory access, interconnection, and resale obligations. Upon Commission approval, the proposed plan will supercede and replace the Current Plan.

II. CONTINUED SATISFACTORY AND NON-DISCRIMINATORY PERFORMANCE SINCE RECEIPT OF § 271 AUTHORITY

6. In June 2002, BellSouth applied to the FCC for a grant of Section 271 long distance authority in Kentucky. In August 2002, in response to a Department of Justice inquiry, BellSouth submitted data indicating that its performance met or exceeded the performance standard for 88% of the metrics (and submetrics) that contained a statistically significant level of activity for the six-month period of January through June 2002. The FCC relied on such data (and other information) in determining that: (i) the Kentucky local market was open; (ii)

BellSouth had met the competitive checklist requirements of Section 271(B) of the Act; and (iii) that BellSouth's entry into the long distance was in the public interest.[5]

7. Since receiving long distance approval, BellSouth's performance has been at or above the level of performance the FCC considered satisfactory in granting Section 271 authority. For example, during a recent eight-month period (September 2003 through April 2004), BellSouth's overall performance level was 89.3%.[6] Even though BellSouth's overall performance level is at or above BellSouth's overall performance level upon which Section 271 authority was granted (88%), and therefore, no backsliding has occurred, BellSouth has paid almost $400,000 in Tier-1 SEEM payments in Kentucky for the first five months of 2004. Given BellSouth's consistent level of performance, there is no rational relationship between the level of performance and the level of payments.

III. PROBLEMS WITH THE CURRENT PLAN

A. The Current Plan's Fee Schedule Generates Exorbitant Penalties That Bear No Rational Relationship to Performance Provided to CLECs or the Service Charges Associated with Such Penalties.

8. A new SEEM fee schedule is necessary because the current SEEM fee schedule generates excessive penalties that have no rational relationship to the damage (if any) sustained

[5] Memorandum Opinion and Order, *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina,* WC-Docket No. 02-150, FCC 02-260 (September 18, 2002) ("*BellSouth Multistate Order*"), at ¶ 276.

[6] Starting in November 2003, BellSouth commenced reporting performance results in a "Single Reporting Structure" or "SRS" format. The SRS format is slightly different than the reporting structure used during the 271 application process. The impact of implementing the SRS format is negligible since BellSouth's performance for the period January 2002 to June 2002, if calculated under the SRS format, would remain at 88%. For instance, in the Section 271 application, certain maintenance and repair measures such as Percent Repeat Reports, Maintenance Average Duration, and Percent Out of Service Greater than 24 Hours were considered in parity if no trouble reports (or activity) were received (or reported) for such measures in a given month. Such parity determinations would exceed the applicable BellSouth retail analogue and thus increase BellSouth's overall performance level. With the SRS format, such comparisons have been removed.

by a CLEC as a result of a missed performance measurement standard. Additionally, such penalties often amount to year's worth of free service for a CLEC when one compares the penalty paid to a CLEC to the recurring charge such CLEC pays for the service associated with the penalty. Including excessive penalties in a SEEM plan is contrary to the concept that good performance should result in few, if any, payments for a failure to perform. This is particularly true in the absence of backsliding.

9. BellSouth's concerns over the existing fee schedule should not be confused with the Current Plan's fee calculation methodology, which is a transaction-based fee calculation ("transaction-based penalty plan"). BellSouth proposes that the Commission continue with a transaction-based penalty plan. The rationale for continuing with a transaction-based penalty plan is straightforward. When the SEEM plan indicates that there is a statistically significant and material performance deficiency, a SEEM payment is calculated by multiplying the number of failed transactions (i.e. transactions out-of-parity) by the applicable fee. In summary, aligning SEEM payment liability with the number of transactions that are out-of-parity is a logical way to calculate monetary damages that are proportional to the degree of performance failure.

10. Despite the soundness of the transaction-based penalty plan, the fee schedule associated with the current plan is outdated and continued use of such a fee schedule is unwarranted and inefficient. Specifically, the current fee schedule, which resulted from evidence considered by the Georgia Public Service Commission in 2000, was developed at a time when there was much less CLEC activity in the local market. As such, there were some concerns that BellSouth's potential SEEM payment liability – given the level of CLEC activity – was perhaps too low to be an effective deterrent against backsliding. Perhaps as a compensation or surrogate for a perceived relatively low volume of CLEC activity, the resulting per-transaction fee schedule

was established at an artificially high level. Even at that time, the amount of the penalty per transaction was excessive, when compared to the rates CLECs paid for certain services. Today, the inequitable imbalance created by excessive penalties per transaction is exacerbated by a substantial increase in overall volume of CLEC activity. Because a transaction-based payment plan is scalable (the more transactions where disparate service is detected, the higher the payment), the problems created by an artificially high fee schedule are compounded immensely with increased CLEC activity.

11. Examples of excessive SEEM payments are numerous. The following are examples of actual SEEM payments in Kentucky. The examples are provided for illustrative purposes only, and therefore do not represent a complete list of excessive SEEM penalties that produce economically irrational examples.

KENTUCKY SEEM PAYMENT EXAMPLES

12. The following are actual examples where CLECs received Tier-1 SEEM payments despite overall excellent service results provided by BellSouth during the period of January 2003 through March 2004. During this fifteen-month period, BellSouth paid $3.6 million in Tier-1 SEEM payments to the CLECs operating in Kentucky. More recently, for the first three months of 2004, BellSouth paid over $272,000 in Tier-1 SEEM payments in Kentucky. A detailed analysis of such payments indicates that over $169,000 (62%) were associated with one measure, Customer Trouble Report Rate.

(i) CUSTOMER TROUBLE REPORT RATE (CTRR)

CTRR is calculated by dividing the number of trouble reports in a month by the units or lines in service. In the existing Kentucky SEEM plan, CTRR is disaggregated into seven different SEEM measures. For instance CTRR – UNE Loops and CTRR - Loop & Port Combinations are both UNE SEEM measures. CTRR - Resale POTS is an example of a Resale SEEM measure. The average CTRR for all resale and UNE products was 1.5% for the period January – March 2004. Said another way, as measured by the SQM, BellSouth provided 98.5% (100% - 1.5%) trouble free service to all CLECs for all products during this three-month period. A further examination of the products indicates that $147,000 (87%) of the CTRR Tier-1 SEEM payments were paid for the UNE Loop and Port Combination product which had an overall CTRR rate of 1.6% (and a corresponding trouble-free rate of 98.4%) during the three-month period. BellSouth made a total of 25 SEEM payments to 15 CLECs during this three-month period for this submetric. Four CLECs received over $131,000 (89%) of the total CTRR SEEM Tier-1 payments for the UNE Loop and Port Combinations.

- CLEC 1 and 2 both received over $18,000 during the 3-month period.[7] Dividing the total Tier-1 payment by the number of trouble reports submitted by these two CLECs yields over $400 in SEEM payments for each trouble report subject to a SEEM penalty payment. Despite the receipt of such SEEM payments; both CLECs experienced a trouble free report rate in excess of 95% during the three-month period of January through March 2004.
- The third CLEC received over $21,000 in SEEM payments which equated to an average of over $500 per trouble report. This CLEC had an overall 96% trouble free rate for all lines in service during the three-month period of January through March 2004.

[7] CLECs are not identified in the SEEM payments examples. Once appropriate measures to protect proprietary information are established, BellSouth will disclose the identity of such CLECs to all interested parties.

- Finally, the fourth CLEC received over $72,000 during the three-month period for an average of over $500 per trouble report.

It often is instructive to compare the amount of the SEEM payment paid by BellSouth to the amount that the CLEC pays for a particular service. For instance, the average monthly rate for a UNE Loop and Port Combination in Kentucky is $19. In the examples cited above,BellSouth paid $400-$500 for each trouble report. This is equivalent to 21 – 26 months ($400 divided by $19 = 21; $500 divided by $19 = 26) of the payment for a Loop Port Combo. In essence each of these CLECs received almost two years of free service for each trouble reported for SQM purposes. This is a clear example of the SEEM payment having little relationship to the value of the service. To make matters worse, a trouble <u>report</u> is just that: a report. There may or may not have been an actual trouble which impaired a customer's service.

Looking at the UNE Loops sub metrics for Customer Trouble Report Rate, BellSouth made a total of 14 SEEM payments to 6 separate CLECs during this three-month period of January through March 2004. Each of these payments averaged over $450 per trouble reported. With an approximate $19 per month recurring change for 2W Analog Loops, this averages to nearly two years of BellSouth charges to the CLEC for each alleged trouble reported.

(ii) <u>PERCENT MISSED INSTALLATION APPOINTMENTS (PMIA)</u>

This measure shows BellSouth's ability to install service on the scheduled day. In the existing Kentucky SEEM plan, PMIA is disaggregated into seven different SEEM measures. For instance PMIA – UNE Loops and PMIA - Loop & Port Combinations are both UNE SEEM measures. PMIA - Resale POTS is an example of a Resale SEEM measure. The result is seven different PMIA SEEM measurements for each CLEC.

PMIA also has examples of the same type of excessive payments as noted above with the Customer Trouble Report Rate measures. For instance for PMIA-UNE Loop and Port Combinations, during the period of January through March 2004, BellSouth made 12 SEEM payments to 12 separate CLECs. Each of these payments was a result of only one missed installation appointment by BellSouth and each payment averaged $400 per missed appointment. With an approximate $19 recurring charge for Loop Port Combinations, this SEEM payment is the equivalent of 21 months of free service to the CLEC for each missed appointment, even though only one appointment was missed during the entire 3-month period. In many instances, appointments missed on one day are completed the next day. Therefore, for these examples, the CLECs effectively received nearly two years of service for free, just for an appointment miss which may have been only one day.

(iii) PERCENT MISSED REPAIR APPOINTMENTS (PMRA)

PMRA measures BellSouth's ability to resolve a trouble report by the committed date and time. PMRA for UNE Loop and Port Combinations provides another example of excessive payments during this three-month period. During the period of January through March 2004, BellSouth made 12 SEEM payments to 9 separate CLECs. Of these payments, ten resulted from only one missed repair appointment. These payments averaged $400 per missed appointment. With an approximate $19 per month recurring charge, this averages to 21 months of BellSouth charges to the CLEC for each missed appointment.

(iv) PERCENT PROVISIONING TROUBLES WITHIN 30 DAYS (PPT)

PPT measures the number of service orders where troubles were reported within 30 days of service order completion. In the existing Kentucky SEEM plan, this measure is disaggregated by product, similar to the CTRR, PMIA, and PMRA metrics discussed above. Reviewing PPT for UNE Loop and Port Combos, the same type of excessive payments are also very evident. During the period of January through March 2004, BellSouth made 14 separate SEEM payments for only one reported trouble report. These payments averaged $400 per report. As noted above, the monthly rate for UNE Loop Port Combos is $19. Therefore the SEEM payment is the equivalent of 21 months of BellSouth charges to the CLEC for each reported trouble. Furthermore, as with the Customer Trouble Report Rate (discussed above), a trouble report does not necessarily mean the customer's service was impaired. BellSouth installed over 85,000 UNE Loop Port Combos during the period of January through March 2004 with an overall installation trouble free rate of over 97%.

(v) AVERAGE ORDER COMPLETION INTERVAL (OCI)

This measure reflects the time period from receipt of a valid order from a CLEC to the delivery of the service to the CLEC customer. In the existing Kentucky SEEM plan this SQM measure is disaggregated into seven Tier-1 SEEM submeasures for each CLEC. An example of such a SEEM submeasure is "Average Completion Interval (OCI) & Order Completion Interval Distribution, UNE Loop and Port Combinations."

During the period of January through April 2003 in Kentucky, BellSouth paid over $1.6 million to one CLEC, primarily for the Order Completion Interval for the SEEM submetric OCI - UNE Loop and Port Combinations. A substantial portion of that $1.6 million in SEEM payments was the direct result of an apparent CLEC business practice of submitting a large number of orders late in the day. By submitting orders late in the day, the average order completion interval for this CLEC was slightly longer than the average order completion interval for BellSouth's retail customers. The difference in order completion intervals is often fractions of a day. For example, in a recent period, the CLEC average order completion interval was 1.40 days, versus 1.52 for retail. In the example mentioned above, the difference in average order completion intervals for the CLEC which received the $1.6 million in SEEM payments was approximately one-third (1/3) of a day (1.5 for CLEC vs. 1.8 days for retail analogue). It is likely that the end-user may not even perceive a difference in completion interval that is this small. There is no rational reason for such a large payment based on a difference in time that the end-user may not even have noticed and furthermore, that was the result of a CLEC practice in submitting large orders late in the day.

As can be gleaned from the examples cited above, even when BellSouth is providing overall excellent service levels to the CLECs BellSouth continues to pay excessive SEEM payments. The level of service being provided to the CLECs is not the primary cause of the excessive penalty payments in Kentucky. From a practical perspective, the only way to reduce such excessive payments under the Current Plan would be for BellSouth to provide a better aggregate level of service to CLECs when compared to the level of service that BellSouth provides to its retail customers. Obtaining such performance level would require a nearly perfect level of service, which is an unreasonable, unnecessary, and inappropriate performance standard as it would result in BellSouth breaching its non-discriminatory obligations by providing superior performance to CLECs when compared to BellSouth retail customers.

13. In granting BellSouth authority to originate in-region InterLATA long distance calls in Kentucky pursuant to Section 271 of the Act, the FCC found BellSouth's SEEM plan to be an effective enforcement mechanism for preventing backsliding by BellSouth in the level of

service offered to CLECs after BellSouth's entry into the long distance market.[8] BellSouth's proposed SEEM will continue to be an effective enforcement mechanism for preventing backsliding, while generating more rational, commercially reasonable remedy payments. Such an improved, evolving plan is consistent with the FCC's discussions on the issue. Specifically, in granting BellSouth long distance authority in Tennessee and Florida, the FCC recognized and anticipated that BellSouth's SEEM plan would change over time. Further, the FCC indicated, without any apparent concern, that BellSouth's SEEM plan would evolve towards generating more commercially reasonable types of remedy payments:

> We have not mandated any particular penalty structure and we recognize different structures can be equally effective. **We also recognize that the development and implementation of performance measures and appropriate remedies is an evolutionary process that requires changes to both measures and remedies over time.** . . . . We anticipate that the parties will continue to build on their own work and the work of other states to ensure that such measures and remedies to accurately reflect actual commercial performance in the local marketplace.[9]

14. In short, a SEEM plan (such as the current one) that results in the payment of excessive penalties compared to the level of performance delivered is not necessary from the FCC's perspective for an effective performance measurement plan and is contrary to the concept of an evolving SEEM that gravitates towards the inclusion of more commercially reasonable remedies. Consistent with the FCC's perspective, BellSouth's proposed SEEM will: (i) provide more than sufficient safeguards against backsliding; (ii) reward improved performance; and (iii) penalize declining performance.

---

[8] *BellSouth Multistate Order, at* ¶ 293.

[9] *BellSouth Florida/Tennessee Order,* at ¶ 170 (emphasis added).

B. The Current SQM Plan Contains Metrics and Submetrics That Serve No Useful Purpose. Eliminating Such Metrics Will Improve the Plan's Monitoring Capability.

15. The current SQM contains many measurements that serve no purpose because of the lack of CLEC activity in such measurements. That is, the SQM is designed to measure performance triggered by CLEC activity. Where there is no CLEC activity, there is nothing to measure. Of the 1,808 SQM submetrics with statewide or regionwide results, 594 are diagnostic or are parity-by-design. This means that BellSouth does not compare such measurements to a performance standard such as a retail analogue or benchmark. As a result, these 594 measurements tell the Commission little (if anything) about the level of service BellSouth provides to CLECs.

16. Setting aside the diagnostic and the parity by design submetrics, there remains 1,214 SQM submetrics (1,808 minus 594) that are, in theory, useful in monitoring BellSouth's ability to provide CLECs with non-discriminatory access to its network and operational support systems ("OSS"). The theory does not hold true because of a lack of CLEC-generated activity (such as submitting orders or trouble tickets) in many SQM submetrics.

17. For example, an analysis of SQM data taken from March 2004, indicated that 60% of the non-diagnostic SQM submetrics had no activity. (723 out of 1,214). Continuing with the same data, there were 491 non-diagnostic (i.e. meaningful) submetrics with some level of activity (1,214 minus 723). During this period, 279 of such 491 submetrics had only low levels of activity (i.e. activity levels between 1 and 30).[10] Put another way, the March 2004 SQM data

[10] From a statistical perspective, measuring small sample sizes is a concern. Specifically, the smaller the sample size, the more likely the sample size will not produce statistically valid results.

revealed that there was at best a statistically significant level of activity in only 212 non-diagnostic SQM submetrics. In percentage terms, the March 2004 data indicated that no more than 17% of the current SQM submetrics (212 out of 1,214) could be used by the Commission to evaluate BellSouth's performance in March 2004.[11]

18. An SQM that contains too many measurements results in little or no transactions (or activity) in many measurements. Statistically speaking, small sample sizes are a concern because if the number of transactions falls below a statistically valid sample size, the resulting measurement may be compromised. From a practical perspective, tracking numerous measurements that generate few or no transactions indicates that BellSouth is wasting time and resources by tracking many measurements that are of little or no value to the Commission.

19. The Act opened the local market to competition over eight years ago. Over the past eight years, hundreds of CLECs with multitudes of business plans (resellers, facilities-based providers, non-facilities based providers) have entered the local market. CLEC activity, or more precisely the lack of CLEC activity in many of the SQM measurements, unquestionably shows that the majority of SQM measurements are of no value as a means to monitor BellSouth's performance. Consequently, including such measures in the SQM is useless because such measures have absolutely no bearing on whether BellSouth is providing CLECs with a level of service that comports with the Act's requirements.

[11] The March 2004 data is representative of the low level of activity that occurs every month in most SQM measures.

IV. SUMMARY OF PROPOSED PLAN

A. <u>The Proposed Plan Contains Refined SQM and SEEM plans.</u>

20. The Proposed Plan, attached hereto as Exhibit "A", is comprised of two familiar parts: the SQM and SEEM plans. The proposed SQM is a comprehensive compilation of relevant performance measurements with appropriate retail analogues (that is, standards that tie BellSouth's performance for CLECs to its performance for its own retail customers) and appropriate benchmarks (that is, standards that define a satisfactory level of performance where there is no retail analog).[12] The proposed SEEM is an enforcement mechanism that generates more rational remedy payments: more rational because they result in large penalties ***only*** in the event BellSouth fails to provide CLECs with the level of service that earned Section 271 authority. This plan is better designed to yield penalty payments only when BellSouth's service is not comparable to BellSouth's own retail operation or (where there is no comparable retail function) where BellSouth fails to meet appropriately-established benchmarks that reflect the level of service required for Section 271 authority. Together, the proposed SQM and SEEM will provide the Commission with an improved performance measurement and enforcement mechanism, a plan better able to ensure BellSouth continues to meet its Section 251 obligations. By rewarding improved performance and punishing poor performance, the Proposed Plan contains appropriate incentives and sufficient safeguards for assuring satisfactory and non-discriminatory performance.

21. The overarching goal of the Proposed Plan is the establishment of an effective and efficient performance monitoring and enforcement mechanism. As previously discussed, there

[12] For performance measurement purposes, a "retail analogue" is used when BellSouth provides a comparable service to both CLECs and BellSouth retail customers (example, maintenance and repair measurements). A benchmark is a target and is used when there is no retail analogue (example, hot cut measurements).

are a large number of submetrics in the Current Plan that experience little or no activity on a monthly basis. BellSouth's Proposed Plan combines these low-activity submetrics into larger groupings, of homogeneous transaction types, so as to form a more meaningful basis for statistical determinations of whether parity has been achieved.

22. Additionally, the Proposed Plan eliminates non-critical measurements. These non-critical measurements fall into three major categories: (1) measurements that measure the same event in multiple ways; (2) measurements that include the same transactions in different measurements, thus penalizing BellSouth multiple times for the same failure; and, (3) measurements that track activities or processes that are simply insignificant, or have a minor impact on CLECs or their customers.

B. The Proposed Plan Includes an Effective Deterrent Against Backsliding.

23. BellSouth's Proposed Plan includes an important new feature, which should allay any concerns that the Proposed Plan is soft on performance backsliding. In BellSouth's Proposed Plan, BellSouth has provided an added incentive to avoid backsliding. Specifically, if BellSouth's performance under the Proposed Plan deteriorates by three standard deviations in any month from BellSouth's performance for the twelve (12) months preceding the implementation of the Proposed Plan, then ***the fees in the Proposed Plan increase dramatically*** for that month. Further, the Proposed Plan also encourages improved performance because it permits BellSouth to avoid penalties if there is overall performance improvements by three standard deviations.

C. The Proposed Plan Addresses the Commission's Concerns Regarding Audits and Elimination of Penalties.

24. In its May 11, 2004 Order, the Commission stated BellSouth may file a proposed "Kentucky–specific performance plan", provided that such a proposal "describe[d] whether certain penalties were eliminated and how the plan will ensure that BellSouth continues to provide similar service to CLECs as it does to itself." Further, the Commission requested that BellSouth describe how the Commission should fund a third-party test of such a proposed plan.[13] BellSouth is proposing more streamlined, rational SQM and SEEM plans. This will involve the suggested elimination of certain SQM measurements (in particular, non-customer impacting measurements and measurements with little or no activity) and associated SEEM penalties. Upon the establishment of a procedural order, workshop, informal conference, or other information sharing forum as directed by the Commission, BellSouth is prepared to discuss and explain in greater detail its Proposed Plan revisions, including the rationale for eliminating certain SEEM categories and reducing remaining SEEM fees.

25. Regarding audits, the Proposed Plan contains audit provisions that allow for a CLEC to exercise audit rights as set forth in the CLEC's interconnection agreement, or the Commission to request an audit of the Plan by an independent third-party. Among other things, BellSouth's audit policy provides that the interested parties will jointly determine the scope of any requested audit, and that the costs of such an audit will be equally borne by BellSouth and the requesting CLEC(s). Further, to conserve resources, BellSouth proposes to limit Kentucky-specific audits only to those matters that cannot be appropriately audited on a regionwide basis.

[13] May 11, 2004 Order at p.9.

D. <u>The Proposed Plan Retains All Aspects of an Effective Performance Measurement Plan as Identified by the FCC and Contains Additional Practical Criteria Based on the Experience Gained from Operating under the Current Plan.</u>

26. The Proposed Plan includes a comprehensive set of measurements capturing all the transactions that impact a CLEC's meaningful opportunity to compete. In particular, each measurement domain (such as Ordering, Provisioning, and Maintenance & Repair) contains at least one measure of timeliness and accuracy. Moreover, BellSouth's proposed SQM and SEEM plan retains all of the key criteria of an effective plan identified by the FCC. The five key FCC criteria are:

a. Potential liability that provides a meaningful and significant incentive to comply with the designated performance standards;

b. Clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance;

c. A reasonable structure that is designed to detect and sanction poor performance when it occurs;

d. A self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and,

e. Reasonable assurances that the reported data is accurate.[14]

In addition to retaining the above-mentioned key characteristics, the Proposed Plan includes the following additional characteristics:

a. The Proposed Plan does not penalize nondiscriminatory performance.

b. The Proposed Plan is not so excessive, impractical or unreasonable as to promote uneconomic behavior to meet the demands of the wholesale requirements;

---

[14] *See* Memorandum Opinion and Order, *In the Matter of Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Authorization To Provide In-Region, InterLATA Services in Florida and Tennessee,* WC-Docket No. 02-307, FCC 02-331 (December 19, 2002) ("*BellSouth Florida/Tennessee Order*"), at ¶ 169.

c. The penalty assessment is more proportionate to the degree of failure;

d. The Proposed Plan minimizes the extent to which the same transactions or occurrences are captured in multiple measures (i.e., duplication and overlap), especially where penalties apply; and,

e. The measurement aspect of the Proposed Plan focuses only on key customer impacting measurement processes, and not on the measurement of non-critical or secondary processes.

The additional criteria are based upon BellSouth's experience operating under the Current Plan. By combining the FCC's key criteria with the additional, complimentary criteria based upon practical considerations learned from operating under the Current Plan, the Proposed Plan will provide this Commission with an improved performance measurement plan.

E. <u>The Proposed Plan Provides the Commission with the Ability to Better Manage the Data Reported and Focus on Customer Impacting Performance Areas.</u>

27. A practical benefit of the Proposed Plan is that all the parties involved – the Commission, CLECs and BellSouth – can concentrate their collective efforts on addressing the performance areas that have a meaningful impact on CLECs. With more concentrated areas of performance measurement, the source of any perceived performance problem will be more easily identified and corrected. Further, fewer measurements should result in a periodic review process that is more focused and productive, instead of a periodic review process that becomes mired in the minutiae created by tracking a vast amount of inconsequential data.

V. CONCLUSION

28. The enforcement aspect of the Current Plan (the SEEM plan), was designed to ensure that BellSouth does not backslide in the level of performance provided to CLECs in Kentucky, i.e. that BellSouth continues to meet its Section 251 obligations after receipt of long

distance authority. Despite no backsliding, under the Current Plan, BellSouth continues to pay excessive SEEM payments. Further, the monitoring aspect of the Current Plan (the SQM plan) is inefficient because BellSouth is required to track many measurements that serve no purpose. With the benefit of the data associated with operating under the Current Plan, the goals of the Plan, as originally envisioned by this Commission, can be accomplished by establishing a new performance plan for BellSouth in Kentucky.

WHEREFORE, BellSouth respectfully asks the Commission to supercede and replace the Current Plan with the Proposed Plan attached to this Petition at Exhibit "A".

Respectfully submitted this 31st day of August, 2004.

DOROTHY J. CHAMBERS
General Counsel -- Kentucky
601 W. Chestnut Street, Room 407
P.O. Box 32410
Louisville, KY 40232
(502) 582-8219

R. DOUGLAS LACKEY
ROBERT A. CULPEPPER
Suite 4300
675 W. Peachtree St., NE
Atlanta, GA 30375
(404) 335-0841

COUNSEL FOR BELLSOUTH
TELECOMMUNICATIONS, INC.

548843