

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

COMMENTS OF COVAD COMMUNICATIONS COMPANY

DIECA Communications, Inc. d/b/a Covad Communications Company (“Covad”) hereby submits its comments regarding BellSouth’s petition to change its performance measures plan. Covad urges the Commission to defer consideration of BellSouth’s petition until there is an opportunity to study and possibly adopt findings of state commissions in states where there are larger BellSouth market area and greater industry participation in the collaborative process essential to forging a sound performance measures plan.

BellSouth has asked the Commission to implement a new performance assessment plan for Kentucky to ensure that BellSouth’s performance is at a satisfactory and nondiscriminatory level. At the January 19th informal conference BellSouth provided a handout which states that the Kentucky proposal is “substantially similar to plans being proposed throughout the BellSouth region.” BellSouth informal conference handout at p. 14. Although the current Kentucky plan is based upon one adopted in Georgia, BellSouth admits that it has not yet asked the Georgia commission to implement a new plan.

In support of its petition BellSouth has offered a number of anecdotes to suggest that the current performance assessment plan is “bogged down with problems.” The examples cited in BellSouth’s petition appear to relate entirely to the performance penalties associated with BellSouth’s UNE Loop and Port Combinations, a service arrangement which Covad does not order from BellSouth.

Covad has no quarrel with BellSouth’s desire to have an effective plan that ensures nondiscriminatory unbundled access to network elements (“UNEs”) and interconnection. Moreover, Covad does not believe the performance measures plan should arbitrarily penalize BellSouth if reasonable performance is being maintained. However, Covad believes that as long as BellSouth maintains its dominant retail market position while simultaneously controlling access to UNEs, the Commission should proceed carefully and avoid relaxing prematurely any safeguards essential to protecting the limited amount of competition that exists in BellSouth’s exchange territory.

Effective enforcement measures are crucial. As the Commission stated more than three years ago when it adopted the current SQM and SEEM, any plan that may not adequately protect the Kentucky market should be denied. Case No. 2001-105, Order dated October 19, 2001 at p. 2. The Commission acknowledged in the same proceeding that a “full-blown metrics review” is a “necessary component for developing quality service measures.” *See* Order dated April 26, 2002 at p. 8. Covad suggests that these findings remain valid today. Thus, any changes to the current plan should occur only after an extensive review, including the industry collaboration that is likely to occur in other BellSouth states, like Georgia and Florida, where there are more CLECs actually competing with BellSouth. It is not likely that such a thorough review is realistic in Kentucky, where competitive activity is relatively low.

Ironically, while BellSouth is asking the Kentucky Commission to change a plan adopted almost entirely from Georgia, BellSouth has not yet made a similar request to the Georgia Commission. Covad believes that if there were issues with the Georgia plan adopted in Kentucky, the first logical step would have been for BellSouth to file its proposal in Georgia. Regardless, absent a showing that the current plan is truly failing in its essential purpose, Covad believes there are two reasons the Commission should maintain the current plan for the foreseeable future.

First, BellSouth's petition appears predicated largely on problems with application of existing metrics to the UNE platform *i.e.* the loop and port combination. But the use of that service began to decline after BellSouth filed the petition. BellSouth acknowledged the decline during the informal conference. In addition, on January 25, 2005, six days after the informal conference, BellSouth confirmed the trend in a quarterly earnings release, stating: "In the third and fourth quarters of 2004, UNE-P lines began a declining trend and decreased a total of 165,000 over the second half of 2004." More recently, on February 4, 2005, the FCC issued an order which begins a phase out of the switching UNE entirely. Clearly, order volumes and BellSouth's penalty experience under the current plan will continue to decline.

Second, as discussed above and as BellSouth acknowledged in its petition, the current performance plan was "developed through a combination of a collaborative process (numerous workshops) and adversarial proceedings (several state commission hearings)." BellSouth Petition, ¶ 1. But these proceedings were in other states, not Kentucky. The Kentucky Commission adopted, with one exception, the plan developed by the Georgia Commission. In deciding to adopt the Georgia plan, the Commission determined that a full-blown metrics review was not a viable option in Kentucky. *See* Order in Case No. 2001-00105, dated April 26, 2002,

at 7-8. Thus, Kentucky's experience in evaluating performance measures is fairly modest compared to that of other states in the BellSouth region. And while the Commission has never precluded BellSouth from proposing a Kentucky-specific performance plan, the Commission made clear that review of such a plan would take many months. *See* Order in Case No. 2001-00105, dated June 14, 2004, at 2. Covad agrees. Moreover, Covad believes that an extensive review is not likely to be productive without participation from a broad range of carriers who interconnect with BellSouth. Currently, it appears that very few CLECs, if any, intend to participate actively in the Kentucky proceeding, due to limited resources to participate in such vast evaluations of BellSouth's new plans concurrently in multiple states.

The Florida Public Service Commission is already undertaking an extensive review of BellSouth's proposed measures and penalties plan, in Docket 000121A. Covad is among many CLEC participants in that case. The current Florida review, which effectively began in July 2004, has been a collaborative effort with Florida Staff, BellSouth and a quorum of CLECs. The parties have been active participants in informal conferences with the Commission, numerous face-to-face meetings and workshops and countless conference calls. As a result, most of the work necessitated by the review has already been accomplished. According to the most recent timeline, the parties are to inform Staff by March 3, 2005, as to whether BellSouth's proposed SQM and SEEM penalty plans (as revised through the aforementioned collaborative efforts) are acceptable or if a hearing on the matter will be necessary. Covad suggests that the Commission postpone its review of BellSouth's new SQM and SEEM plan until Florida has completed its review, which literally involves hundreds of issues. In the Florida proceeding, the commission staff is expected to issue its recommendation on SQM by late March. A conference call among

Florida staff, BellSouth, and the CLECs concerning a SEEM strawman proposal is scheduled for next week.

Alternatively, since the Kentucky plan is based on the Georgia plan, the Commission could defer until BellSouth files its revised plan in Georgia. Deferral would be in the best interest of conserving limited resources available to CLECs and would alleviate this Commission from unnecessarily duplicating work that is currently being conducted in other states.

CONCLUSION

If the Commission is to err in this proceeding Covad respectfully suggests that error should be on the side of caution. Accordingly, Covad requests that the Commission defer consideration of BellSouth's petition until determination of a new plan by either the Florida or Georgia Public Service Commission.

Respectfully submitted,

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