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May 29, 2002

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REC'D TN REGULATORY AUTH.
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OFFICE OF THE EXECUTIVE SECRETARY

VIA HAND DELIVERY

David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Docket to Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.*
Docket No. 01-00193

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of BellSouth's Motion for Reconsideration. Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Joelle Phillips

JP:ch

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POSTED

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**
**Nashville, Tennessee**

**IN RE:** ***Docket To Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms for BellSouth Telecommunications, Inc.***

**Docket No. 01-00193**

## BELLSOUTH TELECOMMUNICATIONS, INC.'S MOTION FOR RECONSIDERATION

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to T.C.A. § 4-5-317(a), seeks reconsideration of the Order Setting Performance Measurements, Benchmarks and Enforcement Mechanisms ("Order") issued by the Tennessee Regulatory Authority ("Authority") on May 14, 2002. As set forth below, the Order is based on errors of law and mistakes of fact that, in a number of instances, have created conflicts within individual performance metrics or rendered them completely meaningless. Further, the Authority lacks the jurisdiction to impose penalties on BellSouth through the enforcement mechanisms set forth in the Order. Beyond the lack of jurisdiction, the enforcement mechanisms adopted by the Authority are punitive in nature and, in some instances, are duplicative, which results in BellSouth paying multiple fines for a single performance metric failure. Additionally, the Authority adopted a Delta value much lower than that found in the other states that have adopted SEEM (Tennessee is 0.25 for both Tier 1 and Tier 2 penalties, while Georgia is 0.5 for Tier 1 penalties and 0.35 for Tier 2 penalties; Louisiana uses 1.0 for both Tier 1 and Tier 2 penalties). In the case of Tier 1, reducing the Delta by one-half results in a smaller parity window and will make it appear that BellSouth is not providing service to CLECs at parity with the service BellSouth provides to itself when, in fact, the service is at parity. Finally, the Authority violated the Tennessee Public Meetings Act, T.C.A. § 8-44-101, *et seq.* in adopting its Order and deprived BellSouth of the due process of law to which it is entitled, all of which demands reconsideration not only of the Order itself, but the process that lead to the adopting of the Order.

While the Authority rejected BellSouth's proposed performance measures, on May 15, 2002, the Federal Communications Commission ("FCC") approved BellSouth's application to entry into the long-distance markets in Georgia and Louisiana.[1] In the GA/LA 271 Order, the FCC found that "the existing Service Performance Measurements and Enforcement Mechanisms (SEEM plans) currently in place for Georgia and Louisiana provide assurance that these local markets will remain open after BellSouth receives section 271 authorization" (GA/LA 271 Order ¶ 291) and that "the Georgia and Louisiana SEEM plans provide sufficient incentives to foster post-entry checklist compliance." *Id.* ¶ 293. There is nothing unique to the statutory scheme in Tennessee that requires a different conclusion in Tennessee.

Clearly, the intent of an enforcement mechanism plan is to discourage BellSouth (or any RBOC) from backsliding on performance in the local market after obtaining interLATA relief. Unfortunately, the Authority's Order is not designed to discourage backsliding but, instead, is nothing more than an oppressive system of metrics designed to inflict punitive damages on BellSouth. For instance, the Georgia SEEM Plan has 74 Tier 1 and 98 Tier 2 measures to which penalties are attached (which the FCC found adequate to discourage backsliding) as compared to the Tennessee enforcement plan, which has 975 Tier 1 and 1004 Tier 2 measures to which penalties are attached. Further, the Authority has microscopically disaggregated BellSouth's products (36 product groupings for the provisioning metrics, 31 product groupings for the maintenance and repair metrics, and 31 product groupings for the ordering metrics) as compared to Georgia, which has 7 product groupings in each category. This level of disaggregation results in products falling into multiple product categories that, in turn, result in BellSouth paying multiple penalties for a single performance metric failure. Finally, the Authority has ordered BellSouth to implement the Authority's performance measures plan in a manner and time that literally cannot be accomplished.

The Authority's Order constitutes a step in the wrong direction. It is needlessly draconian and violative of Tennessee statutory and constitutional law.

## I. THE AUTHORITY LACKS JURISDICTION TO IMPOSE AN ENFORCEMENT MECHANISM ON BELLSOUTH.

BellSouth stated in its Brief a willingness to consent to the enforcement mechanisms (i.e., penalties) outlined in its SEEM plan. The Authority, however, ordered penalties that are to take effect sooner than the date BellSouth offered, and that exceed the penalty amounts that BellSouth proposed. In contrast to what BellSouth proposed, the Authority has imposed upon BellSouth, without its consent, a variety of illegal penalties that will apply automatically if BellSouth does not meet the performance standards for the measurements that are set forth in the Order. As discussed below, the Authority lacks the legal authority to impose these penalties, absent BellSouth's concurrence, which it does not give. The limitation on the Authority's power to impose these penalties is clear in the statute governing the Authority and is further underscored by the Tennessee Constitutional prohibition against imposition of fines exceeding $50 without a jury. Accordingly, by imposing these penalties, the Authority erred as a matter of law.

In the Order, the Authority acknowledged in very cursory fashion the position of BellSouth (as stated in its Brief) that the Authority lacks the statutory authority to order penalties

[1] 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 Georgia and Louisiana, CC Docket No. 02-35, released May 15, 2002. ("GA/LA 271 Order")

in excess of $50 per day.[2] The Authority, however, did not address in the Order the controlling statutory requirements, other than the very brief, aforementioned reference. To the contrary, the Authority simply concluded that it had the power to order these penalties as follows:

> The enforcement measures adopted in this docket arise out of the BellSouth/DeltaCom arbitration and are based on the same authority as that exercised in the BellSouth/DeltaCom arbitration and are consistent with state law.
>
> Without a system of enforcement mechanisms, this agency cannot fulfill its obligation under both the state and federal law to ensure that CLECs are able to compete in Tennessee. Performance measurements, without enforcement mechanisms to provide explicit, concrete consequences for unsatisfactory performance, are virtually meaningless.

(Order, p. 28).

There is no citation in the Order to any supporting state or federal law. Moreover, the Authority's discussion on this issue fails even to reference the statutory limit on its power to impose any "enforcement mechanism" in the form of a fine exceeding $50 per day or the constitutional issues relating to imposition of fines without a jury.

Thus, the Authority's ordering of automatic penalties appears to rest solely on two flawed legal conclusions: 1) that the legal authority cited in the DeltaCom arbitration supports this action;[3] 2) that the imposition of these penalties is required to give effect to the ruling of the

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[2] Order, pp. 18-19.

[3] It is noteworthy that the Authority raises DeltaCom in support of its action. Clearly the Authority attempts to construe BellSouth's actions in that arbitration as evidence of consent to the imposition of the plan it adopts. BellSouth's actions in that docket do not constitute consent, but it is apparent from the reference that the Authority concedes that consent would be required in order to impose the plan given the statutory restriction on its power to issue fines.

BellSouth reiterates that the only consent ever given by BellSouth with respect to the imposition of remedies regarding performance measurements was BellSouth's consent to be bound in Tennessee by the SEEM plan in place in Georgia. BellSouth consented to no more and no less than the Georgia plan. BellSouth's offer in this regard was not a menu of requirements from which the Authority was free to make *a la carte* selections. Rather, the only consent ever given by BellSouth was the all-or-nothing proposition that it would consent to the imposition of a plan identical in all respects to the Georgia plan.

Authority and, therefore, legally allowable without regard for the statutory limitation on the Authority's power to impose fines.[4] Both conclusions are unsustainable as a matter of law.

To begin with the first proposition, there are three cases cited as authority for the imposition of penalties in the DeltaCom Interim Order: *MCI Telecomms. Corp. v. BellSouth Telecomms., Inc.,* 40 F. Supp. 2d 416 (E. D. Ky. 1999); *US West Communications, Inc. v. Hix,* 57 F. Supp. 2d 1112, 1121-22 (D. Colo. 1999); *US West Communications, Inc. v. TCG Oregon*, 31 F. Supp. 2d 828 (D. Or. 1998). None of these cases, however, deal with a generic proceeding to set performance measurements, or with the generic setting of penalties that would be automatically applied in the event that performance measurements are not met. Instead, each of these three cases dealt with the arbitration of an interconnection agreement, and stated, <u>at most</u>, the very narrow proposition that interconnection agreements <u>may</u> include provisions for liquidated damages.

Specifically, in *MCI Telecom Corporation v. BellSouth Telecomm. Inc.*, *supra*, ("MCI") the Kentucky Public Service Commission declined to place in an interconnection agreement performance standards, reporting requirements, or penalty provisions. The reviewing Federal Court found that "although a state commission may decide to impose such standards and mechanisms, this court will not conclude that silence on the part of Congress implies that it is the

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4 The limitation on the Authority's power to impose fines has been recognized both by the Authority and parties in earlier dockets. For example, the Attorney General has recognized this statutory limitation on the Authority's ability to impose penalties. In a brief recently filed by the Attorney General in the Service Quality Rules docket (00-00873), the Attorney General stated that "the General Assembly envisioned that assessing penalties would be part and parcel of the regulatory function of the Authority and provided for the ability to assess penalties." The <u>only</u> statute relied upon by the Attorney General in support of this assertion is T.C.A. § 65-4-120, which limits such penalties to $50 per day. *See Brief in Support of Approval of the May 2, 2002 Draft of the Proposed Regulations for Telephone Service Providers submitted by the Office of the Attorney General of the State of Tennessee*, p. 4. In addition, the Authority Hearing Officer in Docket No. 01-00868 specifically recognized the statutory limitation in the Order dated April 16, 2002. As discussed more fully below, any construction of § 65-4-120, which construction would permit the imposition of fines exceeding $50 per day, when the party upon which the fine would be imposed has not consented, would raise constitutional issues pursuant to Article VI, Section 14 of the Tennessee Constitution. Article VI, Section 14 prohibits the imposition of fines exceeding $50 unless imposed by jury.

duty of a state commission to include such provisions in an interconnection agreement." *Id.*, at 928. Thus, the issue in *MCI* was whether the Commission could be compelled to include measurements, reporting requirements and enforcement mechanisms. The court specifically ruled to the contrary. Beyond this, the Court merely stated in *dictum* that measurements and enforcement mechanisms may be included. The court did not discuss the specific circumstances under which either measurements or penalties might be appropriate.

In *U.S. West Communications v. Hix, supra* ("*Hix*"), the Colorado Commission's ostensible "failure to include detailed performance standards and a non-compliance mechanism in the interconnection agreements" was challenged. *Id.*, at 1121. In other words, the Commission did not order performance measurements or penalties of the sort sought in that case and that the Authority awarded in this case. Instead, the issue was whether it was legally appropriate for the Commission to require language in the agreements to state "only that the parties 'remain subject to any applicable liquidated damages provision that may be adopted by the Commission.'" *Id.*, at 1122 (emphasis included) Thus, in *Hix*, the Court did nothing more than uphold the Commission's authority (in the specific context of an arbitration agreement) to provide for the theoretical possibility of liquidated damages being adopted in the future.

Finally, in *US West Communications Inc. v. TCG Oregon, supra* ("TCG"), the interconnection agreement did, in fact, include performance standards, along with liquidated damages that would be available "only if US West repeatedly fails to meet the minimum standards, which are set below the target standards." *Id.*, at 837. The Court went on to state "that although the Act does not expressly provide for such damages, neither does it categorically preclude such provisions in an interconnection agreement so long as they are reasonable and justified under the circumstances." *Id.* The Court found the contractual provision to be justified under the specific circumstances in that case. The Court also specifically rejected US West's contentions that the specific liquidated damage clause at issue was "a penalty and . . . therefore invalid under Oregon law." *Id.*, p. 838. Thus, *TCG* stands for nothing more than a decision that a specific liquidated damages provision (which was expressly found not to constitute a penalty) was appropriate for inclusion in an interconnection agreement

None of the three cases cited by the Authority in the DeltaCom Interim Order deal with what is at issue in this proceeding: automatic, involuntary penalties that are imposed by a state regulatory body in excess of its statutory power to impose fines. Given this, the cited decisions, which relate to liquidated damage clauses in specific contracts between specific parties, provide no legal support for the Authority's decision, even if they were otherwise on point. Obviously, Tier 2 penalties cannot be liquidated damages because they are not paid to any CLEC that might contend that it is "damaged" by BellSouth's failure to perform. Even Tier 1 penalty payments, although paid to CLECs, are not liquidated damages of the sort that can be legally ordered under the circumstances. The record is replete with instances in which CLEC witnesses contend that enforcement mechanisms should be utilized to coerce BellSouth into complying with performance standards. (*See*, for example, Testimony of Cheryl Bursh, p. 3-5.) Further, the CLECs do not contend that their proposed penalties truly represent an accurate assessment of the damages that might be caused to CLECs if performance measures are not met. Moreover, even if the CLECs had made this argument, it is fundamentally incompatible with the notion of a sustainable damage award to think that the precise same amount would equally compensate <u>every</u> single CLEC that is "damaged" by any given performance failure by BellSouth. To the contrary, what is clearly at issue here is the payment of penalties, and these penalties have been ordered by the Authority despite the clear lack of any legal authority to do so.

The cases relied upon by the Authority from Colorado, Kentucky and Oregon fail to provide persuasive authority by which the Authority can impose penalties in Tennessee in light of the substantial difference in the statutes in effect in those states governing the power of those state commissions to levy fines. In stark contrast to the statutory scheme in Tennessee, which limits the Authority's power to impose fines to $50 per day, the statutes governing the commissions of Kentucky, Colorado, and Oregon empower those commissions to impose dramatically larger fines for violations of commission orders. The Colorado commission is empowered to impose fines up to $2,000 for the violation of its orders. Colo. Rev. Stat. Ann. § 40-7-105. The Kentucky commission is empowered to impose fines of $2,500 for violations of its orders. Ky. Rev. Stat. Ann. § 278.990. The Oregon commission is empowered to impose fines of up to $10,000 for the violation of its orders. Or. Rev. Stat. § 756.990. Obviously, these statutes differ drastically from the statute in Tennessee, which empowers the Authority to impose only $50 fines. Moreover, the Tennessee constitution further distinguishes Tennessee from these other jurisdictions. Article VI, Section 14 of the Tennessee Constitution prohibits the levying of fines in excess of $50, except by jury. The Tennessee Supreme Court has noted that this provision is "unique in the whole of American constitutional law, and no other provision like it may be found either in the Federal Constitution or in any other modern state constitution." *City of Chattanooga v. Davis*, 54 S.W.3d 248 (Tenn. 2001). As recently as 2001, the Tennessee Supreme Court has applied this constitutional provision to invalidate the imposition of a fine exceeding $50, for violation of a municipal ordinance, by a city court without a jury. *Id.* at 267.

As stated above, the Authority also appears to conclude that its decision to order automatic penalties is supported by the fact that, in the Authority's judgment, it is necessary to do so. There are two problems with this conclusion. First, the Order contains the statement that without an enforcement mechanism, performance measurements would be "virtually meaningless." (Order, p. 29). However, there is no citation to any evidence in the record to support this conclusion. Nevertheless, the Authority has ordered for the first time in its history (or in the history of its predecessor agency) that its Order must be enforced by an automatic penalty. This conclusion, of course, begs the question of how every order of the Authority up until now has managed to be "meaningful" without an advance assessment of penalties that would apply automatically upon violation of the Order. Again, there is simply nothing in the record to support such a drastic conclusion.

More to the point, even if there were some necessity for automatic penalties in this case, necessity, standing alone, does not create legal authority. Put simply, the Authority does not have the power to order, literally, any mechanism that it deems appropriate to enforce its orders. If it did, then the Authority could not only order harsh and draconian penalties for the prospective violation of its Orders, it could presumably imprison individuals, or even order capital punishment if it deemed these remedies necessary to enforce its Orders. Although this result obviously appears absurd, it is the logical extension of the notion that the Authority has the authority to craft <u>whatever</u> remedy it wishes to enforce its Orders. Moreover, this notion is directly contrary to both State and Federal law.

Clearly, the Telecommunications Act includes certain regulatory duties that relate to implementation of the Act, and these duties may devolve to both the FCC and to State Commissions. The Act, however, does not specifically require performance measurement plans, and certainly does not authorize the imposition of monetary penalties (automatic or otherwise) to enforce compliance with any measurement plan. Thus, in the absence of any penalty created by the Act to enforce its requirements, the respective agency that applies the Act (either the FCC or a State Commission) must do so in a way that is consistent with its general authority. Thus, for example, if the FCC were to attempt to enforce an order (either applying the Act or otherwise), it could only do so within the bounds of its express statutory authority. For example, 47 U.S.C. § 503 provides that orders of the FCC may be enforced by forfeiture penalties, in certain amounts, and under certain delineated circumstances. Accordingly, the federal law in this area provides no power to the Authority to impose penalties such as those ordered.

Like the federal law discussed above, Tennessee law affords no basis for the Authority to impose penalties such as those contained in the order. Moreover, Tennessee law expressly limits the power of the Authority to impose penalties exceeding $50 per day.

It is well-settled under Tennessee law that the Authority must conform its actions to its enabling legislation. *BellSouth Advertising & Publishing Corp. v. TRA*, 2001 Tenn. App. LEXIS 102, *29 (Tenn. App.). Moreover, courts have held that the broad grant of regulatory jurisdiction contained in the statute should not be construed so liberally as to grant powers to the Authority beyond those either expressly granted by the statute or arising by necessary implication from express language contained in the statute. *Id.* (citing *Pharr v. Nashville, C. & St. L. Ry.*, 208 S.W.2d 1013, 1016 (Tenn. 1948); *Tennessee Carolina Transp., Inc. v. Pentecost*, 334 S.W.2d 950, 953 (Tenn. 1960); *Nashville Chattanooga and St. Louis Ry. v. Railroad and Public Utilities Commission, et al.*, 15 S.W.2d 751 (Tenn. 1929); *Tennessee Public Service Comm. v. Southern Ry. Co.*, 554 S.W.2d 612, 613 (Tenn. 1977)). Notwithstanding the language contained in T.C.A. § 65-4-106 instructing that the powers of the Authority are to be broadly construed, as noted above, Tennessee courts consistently have declined to use this provision to establish powers for the Authority that are not provided by or closely related to an express grant of statutory authority.

In *General Portland v. The Chattanooga-Hamilton County Air Pollution Control Board*, 560 S.W. 2d 910, 913 (Tenn. Ct. App. 1976), the Tennessee Court of Appeals reiterated the often-repeated standard that "[a]dministrative agencies have only such power as is granted them by statute, and any action which is not authorized by the statutes is a nullity." The Tennessee Appellate Court made the same point again (this time in regard to the predecessor agency of the Authority) in *Deaderick Paging v. The Public Service Commission*, 867 S.W. 2d 729 (Tenn. App. 1993). In that case, the Court stated that "the powers of the Commission must be found in the statute. If they are not there, they are non-existent." Id., at 731.

Finally, in *Wayne County v. Solid Waste Disposal Control Board*, 756 S.W. 2d 274 (Tenn. App. 1988), the Appellate Court rejected precisely the same sort of agency action that was taken by the Authority in the instant case. Specifically, in *Wayne County*, the administrative agency went beyond its express authority because it believed there was a necessity to do so. In the words of the Court,

> The Board claims that it has the authority to fashion remedies for essentially private wrongs even though the Act does not give it explicit authority to do so. Asserting that the authority is implicit in its authority to abate public nuisances and to issue orders of correction, the Board argues that its interpretation of the Act is reasonable and consistent with the Act's purposes.

*Id*., at 383.

The Court specifically rejected this approach, and stated the following:

> Notwithstanding the logic and appeal of the Board's position, it provides an insufficient basis for this Court to engraft remedies on to the Act that were not put there by the General Assembly. It is not our role to determine whether a party is suggested interpretation of a statute is reasonable or good public policy or whether it is consistent with the General Assembly's purpose. We must limit our consideration to whether the power exercised by the Board is authorized by the express words of the statute or by necessary implication therefrom.

*Id*. (emphasis added).

Thus, the reviewing Court made it perfectly clear that administrative agencies in Tennessee do not have ability to expand their powers because they deem it necessary to do so, or because they believe such action would constitute good public policy. In Tennessee, such decisions are left to the General Assembly. Accordingly, the express provisions of the controlling statute strictly limit the authority of administrative agencies, including the Authority. Moreover, in granting power to the Authority, the General Assembly must conform its actions to the Tennessee Constitution.

With respect to the issuance of fines by the Authority, the General Assembly has established the Authority's power under three separate statutes. These statutes provide the only authority under Tennessee law by which the Authority may impose fines. Two of these statutes are inapplicable in this case: T.C.A. § 65-4-125 (establishing authority to impose penalties for unauthorized changes to service providers) and T.C.A. § 65-4-105 (establishing authority to impose fines for violations of the Tennessee Do-Not-Call statute). With respect to all other matters, the only statutory authority under which the Authority can levy monetary penalties is Section 65-4-120, which provides the following:

> 65-4-120. Penalty for noncompliance with commission. – Any public utility which violates or fails to comply with any lawful order, judgment, finding, rule, or requirement of the commission, shall in the discretion of the commission be subject to a penalty of fifty dollars ($50) for each day of any such violation or failure, which may be declared due and payable by the commission, upon compliant, and after hearing, and when paid, either voluntarily, or after suit, which may be brought by the commission, shall be placed to the credit of the public utility account.

Thus, the controlling statute provides that a penalty cannot be assessed in an amount in excess of $50 per day. As noted above, the statute conforms to the requirements of Art. VI, Section 14 of the Tennessee Constitution. Moreover, the statute further requires that the penalty can only be assessed after there is a complaint and a hearing. Finally, the statute makes it clear that the

Authority lacks even the ability to actually require payment of the penalty. Instead, the party against whom the penalty is assessed must either pay it voluntarily, or the Authority can pursue payment of the penalty by filing suit in the appropriate Court. Thus, the Authority's Order in this case violates not only the $50 limit on penalty amounts, it violates several statutory procedural requirements as well. As discussed above, the statue that limits the Authority's power to impose fines to $50 per day is consistent with Tennessee's unique constitutional protection against the imposition of fines without a jury.

None of the rationale in the Authority's Order provides any basis on which the Authority could legally impose fines beyond those established by statute. Because the Authority has ordered penalties in amounts that exceed the statutory limitations, and has ordered that these penalties will be applied automatically, the Authority has clearly exceeded its statutory authority in a manner that is inconsistent with State law. For this reason, the portions of the Order regarding automatic penalties cannot be legally sustained.

## II. The Authority Erred When It Failed to Observe the Requirements of the Sunshine Law for Deliberating the Motion by Director Greer.

Although BellSouth has serious problems with the substance of the Order, which BellSouth will discuss in detail in the following sections, there are also procedural and due process concerns that have been raised by the process that lead to the publication of the Order. The Authority's Order purports to memorialize the directors' votes in favor of Director Greer's motion made at the April 16th Agenda Conference. Director Greer's motion was made orally, although he incorporated by reference a document, to which he referred as a "handout." (transcript at p. 24, lines 9-11; p. 37, line 25; p. 38, lines 1-7) After providing an oral overview of various aspects of the proposal described in the handout, Director Greer moved that the proposal, which was more specifically set out in the handout, be accepted by the agency. The agency then adjourned for a break to review the handout. (transcript at p. 39, lines 15-16) The handout was not provided, during that break, to the parties. The directors reconvened one hour later and voted to accept the motion by a unanimous vote regarding all portions except the portion providing for a six-month review, which also passed by a vote of 2-1. (transcript at p. 43, line 11; p. 46, lines 17-23) At the conclusion of the vote, the handout was still not released to the parties present, notwithstanding requests for release of the document by parties present. Although not reflected in the transcript of the proceedings, after the recess was taken, Chairman Kyle instructed the staff of the Authority to make the handout available to the parties, but the handout was not provided.

The handout appeared publicly for the first time when it was posted on the Authority website on April 17, 2002. The handout was not included in the transcript of the proceedings on April 16, and there is no reference in the transcript to the handout being introduced into the record. As it appears on the website, the handout is 130 pages long, with an additional 15-page attachment. BellSouth and other parties requested a copy of the handout from the court reporter after the conference adjourned and were informed that the court reporter was not permitted to release it.

The Authority's written order, which memorializes the vote on Director Greer's motion contains an exhibit. That exhibit contains the "performance measurements, benchmarks and enforcement mechanisms" that the order states the directors voted during the April 16th conference to adopt.

Under Tennessee law, the meetings of governing bodies such as the Authority must be conducted openly, pursuant to the requirements of the Tennessee Public Meetings Act, T.C.A. 8-44-101 et seq., which is commonly called the "Sunshine Law." Tennessee courts have recognized that "[p]ublic knowledge of the manner in which public officials make governmental decisions is an essential ingredient of democratic government." *State v. Kingston Springs*, 1993 Tenn. App LEXIS 586, *6 (Tenn. Ct. App. 1993) (citing *Metropolitan Air Research Testing Auth. v. Metropolitan Government*, 842 S.W.2d 611, 616 (Tenn. Ct. App. 1992)); The Sunshine Law preserves this essential ingredient of the democratic process by requiring that government decisions be made openly and by prohibiting governmental agencies from undertaking public business in secret. Tennessee courts have further observed that the Sunshine law should be construed to promote openness and accountability in government and to protect the public against closed-door meetings at every stage of a governing body's deliberations. *State ex rel Matthews v. Shelby County Bd. Of Comm'rs*, 1990 Tenn. App. LEXIS 183 (Tenn. Ct. App. 1990). By requiring deliberations to be public, the Sunshine Law protects against the "non-public crystallization of secret decisions followed by their perfunctory ratification in a subsequent meeting." *Neese v. Paris Special Sch. Dist.*, 813 S.W.2d at 436.

Since its creation, the Authority has taken steps to observe its obligations under the Sunshine Law by conducting its business both through public hearings and rulemaking proceedings as well as regular agenda conferences (sometimes referred to as "Sunshine Conferences"), at which the various Directors present motions for consideration by the agency. The Directors deliberate such motions on the record at these public Agenda Conferences prior to voting.

The Sunshine Law does not prohibit the Directors from recessing to review materials or to consider a decision individually. Further, the Sunshine Law presents no bar to the individual consideration of an issue by a Director outside of the public forum. In order to satisfy the requirements of the Sunshine Law, however, discussion and deliberation must be conducted in public and in a manner affording any interested party the opportunity to meaningfully observe that deliberative process. Accordingly, while the directors were free to retire to their chambers to review Director Greer's handout before voting, deliberation on that motion was required to take place at a public meeting, and those in attendance possessed a right to know what was being considered by the Directors.

The events at the April 16 Agenda conference raise questions in light of the requirements of the Sunshine Law.

The first question is whether the Directors had sufficient time to review the lengthy handout during the one-hour break provided. As discussed in the *Neese* case, it is not sufficient for the Directors to confer and decide a matter in advance and then simply go through the motions at the Agenda conference of ratifying a decision made previously. Given the apparent length of the handout and the technical nature of its contents, it is difficult to imagine that the Directors had sufficient time to review the substance of the motion. While the short period for review does not, alone, establish that the Directors deliberated at some other time, at the very least, the brief period of time for review of the handout highlights the importance of the oral comments of the movant, Director Greer. These comments were essential for several reasons, one of which was assisting the other members of the Authority to review and understand the substance of the complex motion.

Director Greer's oral comments at the Agenda Conference raise the second question. These comments were essential to the requirements of the Sunshine Law in two respects. First, as noted above, at a minimum the comments provided the context to the other Directors, who were bound legally to deliberate the motion publicly after only a brief period of time to review the handout.[5] Second, those comments were the only manner in which those observing the

[5] As Hearing Officer, Director Greer was not required to present the Motion orally. Rather, given the length and complexity, Director Greer could have presented his findings as a written report and recommendation to the

conference had any way of knowing the substance of what the directors were deliberating, because the Authority declined to make the written handout available to observers. Stated simply, because the public had no access to the handout, Director Greer's oral comments gave the public its only clue regarding the substance of the motion. A decision on the motion can hardly be deemed public, as required by the Sunshine Law, if the public cannot discern what proposal is being considered.

In his oral comments, Director Greer purported to describe various aspects of the motion. Several of these representations, however, were not consistent with the substance of the motion as provided in the handout. For example, in his oral comments, Director Greer represented that his motion was adopting the penalties and categories proposed by BellSouth, stating, "I also propose that BellSouth's recommended categories and remedy amounts be adopted." [transcript at p. 34, lines 20-22] This point is extremely significant in light of the statutory limitation on the Authority's power to impose fines. As his oral comments described the motion, it appeared that his motion addressed this legal issue by imposing only those fines to which Bellsouth had agreed in its own proposal. Upon review of the handout, however, it is clear that the motion did *not* adopt BellSouth's proposed penalties, but rather sought to impose on BellSouth a system of penalties applied to nearly 2000 measurements, in contrast to the 78 measurements referenced in Director Greer's comments. [transcript at p. 22, lines 23-24] Director Greer's oral comments further stated that he proposed a plan by which Bellsouth's "systematic failure to provide adequate service to the CLEC community" would result in Tier II penalties. [transcript at p. 35] In contrast, in the handout, the Tier II penalties are made applicable to even a single violation. Director Greer stated in his oral comments that the proposed benchmarks "generally are designed

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Directors. Such a report could have been published prior to an agenda conference, obviating the need for such a brief time to review the recommendation.

to represent the most stringent benchmarks that have been adopted in other BellSouth states." [transcript at p. 23, lines 18-20]. The terms of the motion as reflected in the handout, however, dramatically exceed the benchmarks established in any other state in BellSouth's nine-state region. All three of these examples go to the very heart of the motion.

These substantive variations between the overview provided by Director Greer's comments and the substance of the motion contained in the handout both severely undermined the deliberative process, by misleading the other Directors as to the meaning of the lengthy handout[6], and also violated the most fundamental requirement of the Sunshine Law. By stating publicly one thing, while asking for the Directors to ratify something different, Director Greer's comments rendered the public nature of the meeting meaningless. It was as if the Directors were deliberating in secret code, because those present had no way to know, without the handout, what was being deliberated. Moreover, because the oral comments presented an inaccurate description of the substance of the motion, not only were those present unaware of the substance of the motion, but, worse, they were actually led to believe that the substance of the motion was actually something different than it was. Had Bellsouth been aware of the discrepancies, it would have sought to be heard on those issues. Specifically, Bellsouth would have sought to ensure that none of the Directors voted to accept the proposal without first being made aware that the motion did not reflect the penalties proposal made by BellSouth and represented a drastic departure from the enforcement plans in place in other states.

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6 Indeed, it appears that Director Greer recognized the importance of providing an accurate description of the handout, as he frequently prefaced his various comments by saying that he "needed to elaborate" [transcript at p. 24, line 12]or "should mention" [transcript at p. 24, line 2], or "should point out" [transcript p. 31, lines 8-9] various aspects of the substance of his proposal. Moreover, Director Greer was careful to note the specific ways in which his motion departed from MCI's proposal on special access. (transcript at pp. 31-33). Director Greer painstakingly noted specific pages in the MCI proposal from which his motion varied. In light of the detailed description of the manner in which the motion varied from the MCI proposal, parties observing the proceedings would have rationally concluded that Director Greer would have highlighted any variance in his motion and the proposal of BellSouth, which he state he was generally moving to adopt.

The final question is how it came about that the Directors agreed to the final written order, which is different than the handout on which they voted during the conference. As noted above, the motion received a unanimous vote as to all aspects other than the six-month review. Notwithstanding that acceptance, the final order differs from the handout in numerous respects.[7] In light of these differences, it is clear that either: (1) the handout attached to the transcript is not the handout on which the Directors deliberated; or (2) at least some of the Directors deliberated regarding the differences after the public meeting given that the written order differs from the handout. As to the first possibility, had the handout been made public there would have been no confusion as to what was being voted, and this is precisely what the Sunshine Law requires – that the public in attendance be able to monitor the decision-making process. As to the second possibility, the Sunshine law prohibits such private reconsideration of a decision. In either event, the discrepancies between the final order and the handout demonstrate that the order was reached in a manner inconsistent with both the letter and, more importantly, the spirit of the Sunshine Law.

## III. THE IMPLEMENTATION SCHEDULE IMPOSED BY THE AUTHORITY IS UNREASONABLE AND CONTRARY TO THE EVIDENCE PRESENTED AT THE HEARING.

Turning to the substance of the Order, BellSouth takes issue with the requirements of the Order with regard to the timing, as well as to the substances of the measurements adopted by the Authority. Turning first to the time frames in which the Authority has ordered BellSouth to implement the Order, the Authority directed BellSouth to either implement the Authority's measurements immediately, or, in some cases, within 90 days of the Order. However, the uncontroverted testimony in this proceeding is that implementation of the exact measurements

[7] The handout and the exhibit differ substantially. Those differences are noted in Attachment A to this Motion.

proposed by BellSouth in its testimony ("BellSouth measurements") would take three months from the date such implementation was ordered.[8]

While BellSouth could have implemented the BellSouth-proposed measures within three months, and while the Order ostensibly specifies 64 measurements proposed by BellSouth, the Order modifies 61 of these measurements. Most of these modifications are significant, requiring additional programming beyond what would have been required if the Authority had adopted these proposed measures without change. Further, several aspects of the Order require BellSouth to make changes to practices, methods and procedures if BellSouth is to comply with the Order. According to the Order, 49 of these changed measurements are to be implemented immediately. It is impossible to make the changes required in order to conform to the Authority's order "immediately."

One of the key changes the Order makes to the BellSouth measurements involves product disaggregation. As an example, the TN measurement P-1, Mean Held Order, has 36 levels of product disaggregation specified. Of these 36 product groups, 20 are either new or are revised definitions of existing product groups. To separately report these products, BellSouth must modify programming and, depending on the report, changes may have to be made to the feed for the source data. Importantly, the Order specifies changes in product disaggregation or standards for 25 other measurements that, per the Order, are to be implemented immediately, each of which will require similar programming.

To illustrate one problem area, certain of BellSouth's measurements are regional in nature. BellSouth's ability to comply with the time frames established by the Order is complicated by the Order's apparent requirement that a number of these regional processes and regional measurements be converted to measurements that have Tennessee-specific data. There

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8 See Page 102 of the Direct Testimony of David Coon, lines 5 though 7.

are a total of 17 measurements that are currently done at the regional level that the Order appears to require be measured at the Tennessee level. The conversion of these measures cannot be done in the time allowed by the Order.

A modification to any measurement is a methodical process that requires the efforts of subject matter experts, business analysts, programmers, developers and database analysts, as well as personnel dedicated to quality control. To be specific, a single measurement change involves each of the following steps:

1) Conversion of requirements into general business rules and source system identification, including,
   - (a) A determination of the changes required in the detailed documentation of the measurements. In BellSouth this documentation includes the Service Quality Measurement Plan (SQM);
   - (b) Research and documentation necessary to produce the high-level framework for the changes in the measurement. This step includes a description of the revision, the intent of the measurement and a description of the output required;
   - (c) The handoff to the organization that will refine the framework into the technical specifications for changes in the measurement.
2) Development of a preliminary measurement design document, including,
   - (a) Complete identification of the sources of the input database, table, field and data value;
   - (b) Detailed description and application of business rule(s);
   - (c) Detailed description of output requirements;
   - (d) Coordination of development requirements and the Coding design;

(e) Reconciliation between Design Requirements and Coding Requirements.

3) Code development and initial testing, which includes:

(a) Review and an initial mapping of requirements for the revised measurement into the programs, data base routines and other recurring processes that are used each month to produce the results;

(b) Coding and test process run to ensure that the data inputs are accurately captured, that the business rules are coded properly and that any outputs(s) used as an intermediate step in the monthly production process are accurate;

(c) Application of code production process and testing for expected output and validation of records inclusion and exclusion.

4) Output and presentation development, including

(a) Review of initial design requirements and mapping into the existing production processing;

(b) Coding and test process with test or actual data;

(c) Application of intermediate or raw data to production process.

5) Integration testing for potential impact on existing production outputs.

6) Performance assurance plan development and testing

(a) Review and initial mapping of requirements into the production process;

(b) Coding and testing process with test or actual data;

(c) Application of intermediate or raw data to production process with output estimates for evaluation of potential impact on payments.

In addition to the programming changes, the requirements of the Order specify certain changes in measurements that will require changes in BellSouth's processes before BellSouth can implement the revision to the measurement. Obviously, the amount of time required for each measurement change depends on the complexity of the change. However, this effort typically requires anywhere from 45 to 270 days for the total process per measurement. To repeat, this time period is for every measurement, and the more measures there are to be changed, the process takes even longer to accomplish.

A separate timing issue that must be addressed concerns the monthly filing of reports and the submission of payments. The Authority requires BellSouth to deliver validated reports and payments within 30 days of the close of the reporting month. BellSouth does not have the systemic capabilities required to meet the deadline because penalty payments are currently generated and paid based on the 45-day cycle described in the GA SQM, which provides:

> Each month, preliminary SQM reports will be posted to BellSouth's SQM web site (https://www.pmap.bellsouth.com) by 8:00 A.M. EST on the 21st day of each month or the first business day after the 21st. Final validated SQM reports will be posted by 8:00 A.M. on the last day of the month. Reports not posted by this time will be considered late for SEEM payment purposes. Preliminary SEEM reports will be posted on the same day as the SQM validated reports. Validated SEEM reports will posted on the 15th of the following month. Payments due will also be paid on the 15th of the following month.
>
> For instance: May data will be posted in preliminary SQM reports on June 21. Final validated SQM reports and preliminary SEEM reports will be posted on the last day of June. Final validated SEEM reports will be posted and payments mailed on July 15th.

See, Report Publication Dates, GA SQM Version 1.01, issued April 6, 2001.

Meeting the Authority's penalty payment schedule will require the addition of new hardware, the re-coding of current software and extensive modifications to the infrastructure of the organization that currently reports and calculates penalties each month. Because of the limitations on BellSouth's resources, the Authority should adopt the Georgia 45-day processing cycle for the payment and reporting of penalties.

## IV. THE PERFORMANCE METRICS AND ENFORCEMENT PLAN ARE OVERLY BURDENSOME, CONFLICTING, AND PUNITIVE.

Turning to the individual metrics ordered by the Authority, the remainder of this pleading will be organized by specific measures. Each measure will be identified by the number assigned by the Authority, and the individual issues raised by the Authority's treatment of the measure (other than the general concerns already described above) will be addressed.

### 1. TN-OSS-2: Interface Availability (Pre-Ordering/Ordering)

This metric purports to measure the functional availability of applications/interfaces as a percentage of scheduled availability for the same systems. In order for BellSouth to implement this metric, the Authority needs to resolve several problems inherent in the metric as proposed by the Authority. First, there is a conflict between the Exclusions provision and the Business Rules provision in the metric. In the Business Rules provision, an outage is defined as one that is posted to the interconnection website under the change control process. However, BellSouth reports all outages to the interconnection website, even those with slow response times and loss of non-critical functionality. Thus, the Authority's definition of an outage conflicts with the Exclusions provision, which specifically excludes degraded service such as slow response time and loss of non-critical functionality. The authority should amend the definition of outage to include only full outages, which would be consistent with the Authority's definition of outages in metric TN-OSS-3.

Second, there is a problem in the Authority's definition of interface availability as set forth in the Definition provision. BellSouth believes that the Authority defined scheduled availability as 7 a.m. to 6 p.m. EST in order to preclude BellSouth from conducting scheduled maintenance during that time peak usage period. However, BellSouth's interfaces are not available during all those same hours on the weekend days. For instance, on Sundays the

LESOG, LENS and TAG systems are not available until 9:00 a.m. Further, BellSouth often schedules maintenance on the interfaces over the weekends.

In addressing this same metric, the Florida Commission excluded the weekends from this maintenance restriction because of this weekend maintenance issue. Limiting the maintenance restriction to the weekdays and excluding the weekends will harm no CLEC. Thus, the Authority should modify the definition of interface availability to exclude weekend maintenance.

Third, the Authority has included RoboTAG in the disaggregation provision of this metric. RoboTAG is an off-the-shelf third party software application that is maintained by the CLEC at the CLEC's premises and is used by the CLEC to connect to BellSouth's TAG interface. BellSouth has no control over the availability of RoboTAG. Instead, the TAG disaggregation, already ordered by the Authority, captures outages for those CLECs utilizing the RoboTAG software application. The Authority, therefore, should remove RoboTAG from the Disaggregation provision.

Fourth, the Authority requires BellSouth to report this metric at a state specific level. There was no evidence presented at the hearing that the calculations for this metric would be any different at the state or regional level. In fact, the calculation would be the same at the state and regional level because if the system goes down for one state it is down for all states. Thus, there is no reason to require state specific reporting and the Authority should remove the state specific requirement from the Report Structure provision.

Finally, the benchmark of 99.5 percent for this metric found in the other BellSouth states was based on: (1) measuring availability over a longer period of time, not the 7 a.m. to 6 p.m. EST period established by the Authority; and, (2) existing business rules for defining outage, not the new and expanded business rules for outage established by the Authority. As noted above, BellSouth objects to the more restrictive window for measuring interface availability as well as the Authority's conflicting definition for outages. However, in the event the Authority refuses to make the modifications proposed by BellSouth, the benchmark must be modified to be consistent with the new measurement. A new benchmark should be established based on six months of data collected after the newly defined measurement is implemented.

### 2. TN-OSS-3: Interface Availability (Maintenance & Repair)

As with the previous metric, the Authority requires BellSouth to report this metric at a state specific level. Again, there was no evidence presented at the hearing that the calculations for this metric would be any different at the state or regional level. The calculation would be the same at the state and regional level because if the system goes down for one state it is down for all states. Thus, there is no reason to require state specific reporting and the Authority should remove the state specific requirement from the Report Structure provision. Indeed, if the Authority insists on this metric being state specific, BellSouth will simply change the name on the report related to this metric to indicate that it is for Tennessee. The numbers will not change; additional manual work will simply be required to do what is essentially a useless act.

### 3. TN-O-1: Acknowledgement Message Timeliness
### 4. TN-O-2: Acknowledgement Message Completeness

The TN-O-1 metric measures the response interval between the time an LSR is submitted via EDI or TAG and the time an acknowledgment notice is sent by the system. The TN-O-2 metric measures the percentage of those submissions that are acknowledged electronically. There are two issues with each of these metrics. First, the Authority requires that these metrics be disaggregated at the state level. This level of disaggregation is a problem because the acknowledgement message for EDI and TAG is returned very early in the ordering process, well before any state-identifying information has been extracted from the data in the LSR. Simply stated, at the point in time in which the system is gathering data for these metrics, the system has not yet identified which state is associated with the particular LSR. Thus, BellSouth does not have the data necessary to report these metrics on a state-specific basis and the Authority should remove the state specific requirement from the respective Report Structure provisions. Reporting these metrics at a regional level is consistent with the other state commissions that have adopted these metrics.

Furthermore, a single acknowledgement can apply to LSRs submitted for multiple states and there is no practical way to allocate these acknowledgements to these states.

Second, each of these metrics has a conflict between the Business Rules provision and the Reporting Structure provision. The Business Rules provision acknowledges that when a CLEC uses an aggregator, BellSouth will not be able to determine which specific CLEC or state is associated with a particular LSR. Conflicting with this acknowledgement is the requirement in the Reporting Structure provision that BellSouth report these metrics on both a CLEC specific/aggregator and a state-specific basis. Thus, the Authority should remove the requirements in the Reporting Structure provisions that BellSouth report these metrics on a CLEC specific/aggregator basis and on a state-specific basis.

Finally, given the regional nature of these metrics, combined with the fact that not every CLEC (*i.e.*, those using an aggregator) will be eligible for penalties under these metrics, the Authority should remove the Tier 1 penalty requirement from the Enforcement Mechanism provisions and leave these metrics as a Tier 2 penalty only.

**5. TN-O-3: Percent Flow-Through Service Requests (Summary)**
**6. TN-O-4: Percent Flow-Through Service Requests (Detail)**

These metrics measure the percentage of LSRs submitted electronically that flow through and reach the status where a FOC can be issued. There are two problems with these metrics.

First, the Authority has established future benchmarks that exceed the most stringent benchmark found in the other BellSouth states. Thus, the benchmarks are in direct conflict with the Authority's Order wherein the Authority determined that it was adopting benchmarks "that represent the most stringent benchmark that has been adopted in other BellSouth states" and that "the primary goal of these benchmarks is to prevent CLECs operating in Tennessee from receiving service inferior to that which BellSouth provides to itself or CLECs operating in other states." (Order at pp. 23-24). The benchmark established for business increases to 95 percent within three months, which exceeds the most stringent benchmark in BellSouth's region (Florida and Georgia both have a benchmark of 90 percent). Likewise, the benchmarks established for UNEs and LNP both increase to 90 percent within three months and 95 percent within six months, which also exceed the most stringent benchmarks in BellSouth's region (Florida and Georgia both have a benchmarks of 85 percent for UNEs and LNP). Thus, the Authority should remove the future increases from the Benchmark provision.

Second, the Report Structure provision requires reporting at the state level. However, the benchmarks for these measures in the other BellSouth states that have this metric all require reporting at the regional level. This differential in reporting level (regional versus state) is significant because state-level reporting is based on a smaller volume as well as different types of orders, which increases the likelihood that the metric would be impacted at the state level, since the CLECs active in the states have very different marketing plans. If the Authority persists in having this metric measured at the state level, then the Authority should lower the benchmarks on both of these metrics to take into account the smaller universe and mix of order types.

### 7. TN-O-5: Flow-Through Error Analysis

The Authority requires BellSouth to provide this flow-through analysis with Tennessee-specific information. BellSouth does not currently perform this analysis on a state-specific basis. Therefore, BellSouth will have to modify its systems to produce the analysis in the format required by the Authority. Notwithstanding, the Authority has ordered BellSouth to produce this analysis with Tennessee-specific information immediately. The Authority should reconsider its implementation date and give BellSouth 180 days to begin producing this analysis on a Tennessee-specific basis.

### 8. TN-O-6: CLEC LSR Information

There are a number of problems with this metric. First, the Authority has ordered that this metric be reported on a state basis. Currently, BellSouth's systems report LSR information by CLEC, but not to the level of state specific information. Thus, BellSouth will have to modify programming to its systems in order to provide the reporting structure ordered by the Authority. BellSouth requests 180 days in order to make the programming changes.

More disturbing is the Authority's mandate for BellSouth to increase flow-through eligibility to 95 percent or more products. While the Authority makes a finding that "the percent of products eligible should be increased from 57 percent to 95 percent." (Order, Attachment A, p. 1) BellSouth has not been able to determine how the Authority came to derive those figures. Further, flow-through has always been a parity analog, not a benchmark. In essence, the Authority is requiring BellSouth to provide mechanized ordering capability with flow-through using an industry standard LSR format that is superior to the mechanized ordering capabilities that BellSouth provides to itself.

The issue of flow-through is also being discussed in an industry forum in which BellSouth and a large number of CLECs participate. This task force was created as a result of directives from the Georgia Public Service Commission and is held in conjunction with BellSouth's change control process. Specifically, BellSouth and the CLECs meet to prioritize ways to improve flow-through on existing products and develop plans to implement flow-through on future products. The Authority should reconsider its mandate that BellSouth have flow-through on 95 percent of its products. Instead, the Authority should monitor the activities of the Georgia Flow Through Task Force similar to the manner that the North Carolina Utilities Commission is proceeding.

There are other issues arising from the Authority's mandate that BellSouth have flow-through on 95 percent of its products. First and foremost, there will be significant costs associated with the system upgrades to enable flow-through on products that are seldom ordered. Because BellSouth is entitled to recover its OSS cost, this will result in a situation where one, or a few, CLECs will have to bear the burden of the costs of the OSS upgrades. Given the extremely low volume of orders on many of the products that BellSouth offers in Tennessee, the resulting benefit of having flow-through on 95 percent of the products is heavily outweighed by the cost associated with this ability. More recently, the FCC has considered the issue of flow-through and concluded that "BellSouth's OSS are capable of flowing through UNE orders in an a manner that affords competing carriers a meaningful opportunity to compete" and that "BellSouth is capable of flowing through resale orders in substantially the same time and manner as it does for its own retail customer orders." (GA/LA 271 Order ¶ 143)

The manual processes BellSouth uses for complex resold services offered to the CLECs are accomplished in substantially the same time and manner as the processes used for

BellSouth's complex retail services. The specialized and complicated nature of complex services, together with the relatively low volume of orders for them relative to basic exchange services, renders them less suitable for mechanization, whether for retail or resale applications. Complex, variable processes are difficult to mechanize, and BellSouth has concluded that mechanizing many low-volume complex retail services for its own retail operations would be an imprudent business decision, in that the benefits of mechanization would not justify the cost. Because the same manual processes are in place for both CLEC and BellSouth retail orders, the processes are nondiscriminatory and competitively neutral.

An example of a complex service for which retail handling is not fully mechanized is Centrex® service, a complex service available to both retail customers and to resellers. In both cases, the pre-ordering and ordering processes are largely manual. Nonetheless, these manual pre-ordering and ordering processes are substantially the same for both retail and CLEC orders. Service orders for retail services are handled primarily by the applicable business unit for retail services – BellSouth Large Business account teams. Orders for CLEC services are handled by the applicable business unit for CLEC services – CLEC account teams that are part of Interconnection Services ("ICS"). The handling of complex services for CLECs by the Interconnection Services Account Teams is substantially the same as the handling of complex services by BellSouth's Large Business account team for BellSouth's retail customers. The process flow for ordering Centrex® outlined above demonstrates the similarities in the processes used for CLECs and retail customers.

During the service inquiry and ordering processes an extensive package of paper forms is assembled. In both the retail and the resale cases, this package is manually handed off to the service center, where paper service order worksheets are created to assist in entering service orders in the ordering system. After the handoff, the service orders are typed into the applicable service order system for the customer, either ROS, for BellSouth retail customers, or DOE or SONGS, depending on the location, for CLEC customers.[9] DOE and SONGS have the same functionality and performance. Because the person who enters the complex service order in BellSouth's systems never has any contact with the end-user customer, whether the customer belongs to a CLEC or BellSouth, the entry of the order is the same for both the retail and the resale situations, and thus does not result in a different customer "experience" in either case. After the service order is entered, the account team and project manager are notified by e-mail of the service order numbers and due dates. They follow up with the service centers and the end user customer or CLEC as necessary. These processes, with their substantial reliance on manual handling and paper forms, are common to both retail and CLEC complex orders. Thus, BellSouth provides to CLECs the ability to order complex services in substantially the same time and manner as it provides this ability to its retail customers and retail service representatives. To require BellSouth to move to 95% eligible flow through for the products listed on the LSR product matrix seem arbitrary at best. A careful review of the 2001 LSR data provided this Authority reveals that the LSR volume for the more complex products and services listed on the matrix does not support the argument that BellSouth should move to a 95% flow through rate for products that CLEC's do not order.

### 9. TN-O-7: Percent Rejected Service Requests

In this metric, the Authority has ordered disaggregation into 31 product types. This large level of product disaggregation (as noted earlier, Georgia only has 7) creates a number of

[9] The service representative in the LCSC inputs manually-submitted LSRs for designed services into the Exchange Access Control and Tracking System ("EXACT"). If an LSR for a designed service comes in electronically and LESOG cannot issue the order, then it falls out for manual handling and the service representative issues the LSR through EXACT.

problems. First, some of the individual product categories overlap. For example, the Resold Design product category includes records from the Resold PBX, Resold Centrex/Centrex-like, Resold BRI ISDN, and Resold PRI ISDN categories. Similarly, the Unbundled 2 wire xDSL Loops, and Unbundled 4 wire xDSL Loop product categories each contain records from the Unbundled ADSL, Unbundled HDSL, an UCL (short and long) categories. This overlap is significant because a single LSR reject could be counted multiple times thereby distorting the metric.

There are other problems in the product disaggregations that also need to be rectified. Specifically, the LNP product category needs to be modified to include INP because Tennessee has a number of wire centers where INP is required to port a number. The Local Interoffice Trunks category needs to be replaced because it does not describe an existing BellSouth product. BellSouth assumes that the Authority inadvertently combined two distinct products: local interconnection trunks and local interoffice transport. Finally, the Enhanced Extended Loops (EELs) Dispatch category should be removed because LSRs do not indicate whether a dispatch is involved. That determination is made later in the provisioning process. Thus, the EELs Dispatch category is not relevant to the ordering metrics and should be removed.

**10. <u>TN-O-8: Reject Interval</u>**

The same product disaggregation issues identified in metric TN-O-7: Percent Rejected Service Requests are present in this metric as well. Any modifications made by the Authority in metric TN-O-7: Percent Rejected Service Requests should also be made in this metric.

In addition, the benchmarks conflict with the Authority's stated goal (as discussed earlier) of adopting benchmarks that represent the most stringent benchmark that has been adopted in other BellSouth states. In this instance, the Authority has adopted a benchmark for partially mechanized LSRs of 95 percent in five hours, which is more stringent than the 95 percent in ten hours standard adopted by the Florida Commission. Thus, the Authority should modify the Benchmark provisions of this metric and adopt the Florida Commission's benchmark of ten hours for partially mechanized LSRs.

### 11. <u>TN-O-9: Firm Order Confirmation Timeliness</u>

The same product disaggregation issues identified in metric TN-O-7 (Percent Rejected Service Requests) are present in this metric as well. Necessary modifications to resolve the problems in metric TN-O-7 (Percent Rejected Service Requests) should also be made in this metric.

In addition, there are two instances where benchmarks conflict with the Authority's stated goal (as discussed earlier) of adopting benchmarks that represent the most stringent benchmark that has been adopted in other BellSouth states. The first instance is the same as that identified in metric TN-O-8 (Reject Interval) concerning the benchmark of 95 percent in five hours. The second concerns the 95 percent in one hour benchmark for fully mechanized LSRs, which exceeds the 95 percent in three hour benchmark for this measure set by the Georgia and Florida Commissions. Thus, the Authority should modify the Benchmark provisions of this metric and adopt a benchmark of no higher than 95 percent in ten hours for partially mechanized LSRs and 95 percent in three hours for fully mechanized LSRs.

Finally, there is an issue with correlation between this metric and the TN-P-6 (Average Completion Interval)/TN-P-7 (Order Completion Interval Distribution) metric. In this instance, correlation means that each of these metrics have an FOC component that are being measured and reported. Thus, if BellSouth does not return an FOC in a timely fashion under this metric, the time intervals measured in the TN-P-6 (Average Completion Interval)/TN-P-7 (Order

Completion Interval Distribution) metric will also be impacted. This is significant because each of the metrics have penalties associated with them, which means that BellSouth would be penalized three times for failing to return a timely FOC. The Authority should remedy this correlation problem by either removing the FOC interval from the TN-P-6 (Average Completion Interval)/TN-P-7 (Order Completion Interval Distribution) metric or by removing the Tier 1 and Tier 2 penalties from the Enforcement Mechanism provision of this metric.

**12. TN-O-10: Service Inquiry with LSR Firm Order Confirmation (FOC) Response Time Manual**

The Authority requires BellSouth to provide disaggregation on this metric to include a product category for ISDL (UDC) loops. BellSouth does not currently have a separate product category for ISDL (UDC) loops and, therefore, would have to develop a means to identify this. The Authority, however, requires BellSouth to produce this metric with ISDL (UDC) loops immediately. The Authority should reconsider whether this particular disaggregation is NEEDED and if it is not reconsider its implementation date and give BellSouth 180 days to implement the ISDL (UDC) loops disaggregation for this metric.

**13. TN-O-11: Firm Order Confirmation and Reject Response Completeness**

The same product disaggregation issues identified in metric TN-O-7 (Percent Rejected Service Requests) are present in this metric as well. Necessary modifications to resolve problems with TN-O-7 (Percent Rejected Service Requests) should also be made in this metric.

There is also a correlation issue associate with the level of disaggregation required in this metric. The Authority requires BellSouth to disaggregate this metric into fully mechanized, partially mechanized, totally mechanized, and non-mechanized. As note in the Business Rule provision, however, the total mechanized category is simply the combination of the fully mechanized and partially mechanized categories. Thus, a failure in the fully mechanized or partially mechanized categories will also be reflected in the totally mechanized category. This is significant because there are penalties associated with each of the disaggregation categories, which means that BellSouth would be penalized twice for a single failure. The Authority should remedy this correlation problem by removing the totally mechanized disaggregation from the provisions of the metric.

**14. TN-O-12: Speed of Answer in Ordering Center**

BellSouth asks the Authority to reconsider the reporting structure it has established for this metric. The Authority has ordered BellSouth to include data from the customer wholesale interconnection network services (CWINS) center. The CWINS center, however, is a repair center, not an ordering center. Because this metric relates to answer speed in an "ordering center," CWINS data should be removed from the provisions of this metric.

In addition, the Authority should reconsider the benchmark it has set for this metric. The Commission should not have established a benchmark metric but, instead, should have imposed a parity measurement, or retail analog. Per the guidelines established by the FCC, the Authority should only use benchmarks when a retail analog does not exist. In this instance, the CLEC ordering centers have a retail analog in the BellSouth retail business centers, which is the retail analog used by the other state commissions for this metric. In addition, the Authority has set two benchmarks on a single measure (>95% of calls answered within 20 seconds and 100% of calls answered within 30 seconds). Given the dual nature of the benchmark, it is likely that a single missed call could result in two misses. This, in turn, could result in BellSouth paying double penalties on a single call. Thus, the Authority should remove the benchmark and replace it with the appropriate retail analog, the BellSouth business centers.

## 15. **TN-P-1: Mean Held Order Interval & Order Completion Interval Distribution**

In this metric, the Authority has ordered disaggregation into 36 product types (20 of which are either new or are revised definitions of existing product groups). This large level of product disaggregation (as noted earlier, Georgia only has 7) creates a number of problems. First, some of the individual product categories overlap. For example, the Resold Design product category includes records from the Resold PBX, Resold Centrex/Centrex-like, Resold BRI ISDN, and Resold PRI ISDN categories. Similarly, the Unbundled 2 wire xDSL Loops, and Unbundled 4 wire xDSL Loop product categories each contain records from the Unbundled ADSL, Unbundled HDSL, an UCL (short and long) categories. This overlap is significant because a single LSR reject could be counted multiple times thereby distorting the metric. In addition, the Local Interoffice Trunks category needs to be replaced because it does not describe an existing BellSouth product. BellSouth assumes that the Authority incorrectly combined two distinct products: local interconnection trunks and local interoffice transport. The Authority should replace Local Interoffice Trunks product with two products, local interconnection trunks (with parity as the retail analog) and local interoffice transport (with retail DS1/DS3 interoffice as the retail analog).

BellSouth also asks that the Commission reconsider a number of the retail analogs that it has established for the varying product disaggregations. For instance, looking at the Enhanced Extended Loop (EELs) Dispatch product, BellSouth does not have a retail analog known as Special Access (backhauled T1). Clearly the measurement is flawed to the extent it purports to measure something that does not exist. The closest retail analog BellSouth has to an EEL is a retail DS1/DS3 interoffice, which is the retail analog being used by the Florida Commission for a similar product. Also, the UNE Digital Loop less than DS1 (both Dispatch In and Dispatch Out) products are being compared to non-analogous retail services. The UNE Digital Loop less than DS1 products are a designed digital product for which the Authority has established a retail analog of a nondesign product. The Authority should instead adopt a retail analog similar to the Georgia Commission of a retail digital loop less than DS1.

### 16. TN-P-2: Average Jeopardy Notice Interval<br>TN-P-3: Percentage of Orders Given Jeopardy Notices

The same product and retail analog disaggregation issues identified in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) are present in this metric as well. Necessary modifications required for metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) should also be made in this metric.

It is also unclear from the Enforcement Mechanism provision whether the Authority meant to have the Tier 1 and Tier 2 penalties apply to both metrics. In fact, the enforcement mechanism plan summary on page 2 of attachment A to the Order does not list P-3 as a metric for which penalties are due. Thus, BellSouth assumes that enforcement mechanisms are not applicable to the P-3 measure.

### 17. TN-P-4: Percent Missed Installation Appointments

The same product and retail analog disaggregation issues identified in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) are present in this metric as well. Necessary modifications required for metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) should also be made in this metric.

There is also a discrepancy within the Business Rules provision that needs to be remedied. This metric purports to measure BellSouth's ability to meet its due date commitments, which are defined as "any time on the confirmed due date." However, the Authority has a notation about CLEC-ordered, time-specific appointments being included in this metric.

BellSouth only offers time-specific appointments on hot-cuts, which are expressly captured in TN-P-10 (Coordinated Customer Conversions – Hot Cut Timeliness Within Interval and Average Interval). The Authority should remove the time-specific language from the Business Rules provision, which will not affect the purpose of this metric. Otherwise, this metric is duplicative of TN-P-10 (Coordinated Customer Conversions – Hot Cut Timeliness Within Interval and Average Interval) and BellSouth could be penalized twice for the same performance failure.

### 18. TN-P-5: Percent Completions/Attempts without notice or with less than 24 hours notice

The same product disaggregation issues identified in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) are present in this metric as well. Necessary modifications required for metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) should also be made in this metric.

### 19. TN-P-6: Average Completion Interval TN-P-7: Order Completion Interval Distribution

The same product and retail analog disaggregation issues identified in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) are present in this metric as well. Necessary modifications required for metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) should also be made in this metric.

There is also a correlation issue (discussed in more detail in Section V of this Motion below) within the TN-P-6 (Average Completion Interval) and TN-P-7 (Order Completion Interval Distribution) metrics themselves. Basically, these metrics both measure the installation interval, just by different yardsticks. Thus, BellSouth could be penalized twice for the same performance failure.

As a solution to this correlation problem, BellSouth submits that the Authority should have enforcement mechanisms only on processes, not on sub-processes. For example, the Authority would either have a penalty on TN-P-4 (Percent Missed Installation Appointments) and TN-P-6 (Average Completion Interval) or on TN-P-4 (Percent Missed Installation Appointments) and TN-P-7 (Order Completion Interval Distribution), but not on both TN-P-6 (Average Completion Interval) and TN-P-7 (Order Completion Interval Distribution).

In addition, the Authority has redefined the Order Completion Interval ("OCI") to include the FOC time. In other words, this provisioning metric, as defined by the Authority, includes both ordering (the FOC portion) and provisioning intervals. Notwithstanding, the Authority did not increase the provisioning interval to accommodate the additional ordering (the FOC portion) time but, instead, kept the same required interval as the other states that do not include the FOC time in their OCI measurement. Because this measurement purports to measure provisioning intervals only, it should be limited to the provisioning piece (the OCI time) and the Business Rules should be amended such that the measure begins when a valid service order number is assigned by SOCS.

Finally, the time distribution that the Authority is attempting to capture in the TN-P-7 (Order Completion Interval Distribution) metric is already included in the truncated z methodology adopted by the Authority. Thus, an enforcement mechanism is not necessary on TN-P-7 (Order Completion Interval Distribution) as it has already been accounted for.

For the foregoing reasons, the Authority should remove the Tier 1 and Tier 2 penalties from the TN-P-7 (Order Completion Interval Distribution) metric, in order to avoid duplicative penalties. This would be entirely consistent with the manner in which other state commissions have defined this metric.

## 20. TN-P-8: Average Completion Notice Interval

The same product and retail analog disaggregation issues identified in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) are present in this metric as well. Any modifications made by the Authority in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) should also be made in this metric.

## 21. TN-P-9: Coordinated Customer Conversions Interval

The same product disaggregation issues identified in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) are present in this metric as well. Any modifications made by the Authority in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) should also be made in this metric. In addition, the only product for which coordinated customer conversions are done is UNE loops. Thus, all of the other product disaggregation is not necessary for this metric and should be removed.

In addition, the benchmark conflicts with the Authority's stated goal (as discussed earlier) of adopting benchmarks that represent the most stringent benchmark that has been adopted in other BellSouth states. Specifically, the Authority increases the benchmark to 98 percent within 15 minutes after six months, which exceeds the 95 percent within 15 minutes standard adopted by the other state commissions that have this metric. Thus, the Authority should reconsider its benchmark.

## 22. TN-P-14: Percent of Timely Loop Modification/De-Conditioning on xDSL Loops:

The Benchmark provision of this metric conflicts with the Authority's stated goal (as discussed earlier) of adopting benchmarks that represent the most stringent benchmark that has been adopted in other BellSouth states. By way of analogy, Florida's OCI measure has submeasures for xDSL loops with conditioning with a 12-day benchmark and xDSL loops without conditioning with a 5-day benchmark. In essence, the Florida Commission has determined that seven days is the appropriate amount of time for loop conditioning, which is two days longer than the interval allowed by the Authority. The Authority should also consider incorporating this metric into the TN-P-6 (Average Completion Interval) metric as did the Florida Commission.

Finally, the parties to this docket have submitted proposed business rules to the Authority. BellSouth will make additional comments on the business rules as appropriate.

**23. TN-P-15: Percent Provisioning Troubles Within 30 Days of Service Order Activity Completion**

The same product and retail analog disaggregation issues identified in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) are present in this metric as well. Any modifications made by the Authority in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) should also be made in this metric.

**24. TN-P-16: Service Order Accuracy**

The same product disaggregation issues identified in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) are present in this metric as well. Necessary modifications made for metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) should also be made in this metric.

Service Order Accuracy is a regional assessment of how accurately the Service Order has been translated from the LSR. It is currently a manually-produced metric as the fields on the Service Order must be compared against the appropriate entry on the LSR. Because it is a manual effort, a statistically valid sample is taken of service orders for the evaluation. The size of the sample is determined by the order volumes among 24 different categories (using the current regional methodology of 6 products further broken down by dispatch, non dispatch, < 10 and > 10 categories) and the error rates within the 24 categories. In some cases it is not possible to get a statistically valid sample due to the lower ordering volumes and, as a result, the entire product category must be manually evaluated.

The Authority's method of measurement has severely compounded the complexity of the service order accuracy measurement. In its Order, the Authority requires that the evaluation should be state specific and the 24 categories of products should be expanded to 144 (the 36 specified products further divided by dispatch, non-dispatch, >10 and < 10 circuits). Each of these 144 categories was already being captured in the larger grouping of 24. By having a state-level universe of orders which is, by definition, smaller than the regional-level universe, and by multiplying the number of product groups by factor of 6, it is very likely that a statistical sample will not be possible for some products.

Although the Service Order Accuracy result may vary slightly from state to state because of the differences in the mix of orders based on the business plans of CLECs, the service ordering process is regional and should be measured on a regional sample in order to get a mix of all types of orders in the measure. These orders and LSRs are manually evaluated for accuracy making it a very labor-intensive process. Implementing the Authority's Order for this measure will increase expense to BellSouth by $2.8 million a month.

By making this a state-specific measure, the Authority has jeopardized the sample size, which could result in statistically invalid sample sizes for each of the categories because of low order volumes for some of those products. An additional reason why a state-specific Service Order Accuracy measurement is not appropriate is that the CLECs can send LSRs to BellSouth's OSS from their regional call centers which are located all over the United States, not just in

Tennessee. Therefore, the Commission should dispense with the product disaggregation as well as the state-specific disaggregation requirements.

The Authority has ordered immediate implementation of this metric. Such dramatic changes in the metrics cannot be implemented immediately – particularly one with a requirement for extensive manual effort. Implementation for such a requirement would take at least 180 days. Further, the benchmark, 95% accurate, which may have been appropriate for the larger universe of orders, is certainly not appropriate for 36 product groups (where the universe is 1/6 as large) nor is it appropriate for the much smaller state sample.

### 25. <u>TN-P-17: Total Service Order Cycle Time (TSOCT)</u>

The same product disaggregation issues identified in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) are present in this metric as well. Any modifications made by the Authority in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) should also be made in this metric.

### 26. <u>TN-P-20: Percentage of Time the Old Service Provider Releases the Subscription Prior to the Expiration of the Second 9-Hour Timer</u>

BellSouth requests that the Authority reconsider its decision on the implementation date associated with this metric. Currently, BellSouth does not have the data feed for this metric. In order to make this metric work, BellSouth will have to perform some system reprogramming and have software written. BellSouth anticipates that it will take more than 120 days to reprogram the systems and write the software. Thus, BellSouth requests that the Commission reconsider its requirement that this metric be implemented immediately and instead give BellSouth 180 days in which to implement this metric.

### 27. **TN-P-21: LNP – Percent Missed Installation Appointments**

There is a conflict between the manner in which this metric is described in the Benchmark provision and the definition of the metric. Specifically, the benchmark is phrased in terms of "due dates met" while the remainder of the metric is couched in terms of missed installation appointments. BellSouth submits that the Authority should reconsider its benchmark definition and modify it to be based on due dates missed.

In addition, the product disaggregation ordered by the Authority is irrelevant to the actual metric. For instance, the entire point of this measurement is to look at missed installation appointments for local number portability ("LNP"). However, looking at the product level disaggregation for this metric, LNP is not even listed among the 36 products set forth in the metric. BellSouth submits that the Authority should reconsider the disaggregation on this metric and delete the 36 products currently listed and substitute in their place the LNP stand-alone product. If, however, the Authority declines to make this change, then the same product disaggregation issues identified in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) are present in this metric as well. Any modifications made by the Authority in metric TN-P-1 (Mean Order Interval & Order Completion Interval Distribution) should also be made in this metric.

### 28. **TN-B-1: Invoice Accuracy**

There appears to be a conflict between the definition and the level of disaggregation for the retail analog for this metric. The Authority has disaggregated the retail analog for this metric at a product level when no one has requested such a disaggregation (the CLECs agreed with BellSouth's proposed level of disaggregation). That level of disaggregation for the retail analog is not necessary, given that this metric is designed to measure billing invoices that are not separated by product. BellSouth submits that the Authority should modify the retail analogs to be parity with retail.

The Authority should also modify the product level disaggregation for CLEC comparison for interconnection trunks, as that product level should reflect only interconnection. While the insertion of the term trunks may have been inadvertent, it changes the meaning of the metric. Again, there was no opposition to BellSouth's disaggregation and retail analogs on this metric so the Authority should modify it to be consistent with BellSouth's proposal at the hearing.

**29. TN-B-2: Mean Time to Deliver Invoices**

The same product level disaggregation and retail analog issues identified in metric TN-B-1 (Invoice Accuracy) are present in this metric as well. Any modifications made by the Authority in metric TN-B-1 (Invoice Accuracy) for product level disaggregation should also be made in this metric, including changing the term "Interconnection Trunks" to "Interconnection." The level of disaggregation for the retail analogs is not necessary because this metric is designed to measure billing invoices, not products. Thus, the Authority should modify the retail analogs to be at parity with retail (*i.e.*, CRIS and CABS).

**30. TN-B-3: Percent Billing Errors Corrected in x Days**

BellSouth requests that the Authority reconsider its implementation of this metric. BellSouth simply cannot do what the Commission is requesting because BellSouth does not use the daily usage files ("DUF") to correct bills. Instead, billing disputes are handled via a separate procedure that does not utilize DUF records. This same problem was recognized in Florida and Georgia where this metric was also proposed by the CLECs. In response to these problems, the parties were directed to work together to try to develop an alternative metric. The parties successfully reached such an agreement and, in fact, developed two separate metrics in substitution for this metric. A copy of those two metrics is attached, and BellSouth would request that the Authority substitute those two metrics, as agreed by the parties in Florida and Georgia, in place of metric B-3 (Percent Billing Errors Corrected in $x$ Days). BellSouth has labeled those metrics as B-3 and B-3A for convenience.

**31. <u>TN-B-5: Usage Data Delivery Completeness</u>**

**32. <u>TN-B-6: Usage Data Delivery Timeliness</u>**

**33. <u>TN-B-7: Mean Time to Deliver Usage</u>**

There is a conflict in these metrics that is a result of a mistake by BellSouth. While it appears that the Authority adopted BellSouth's measures in whole (with the addition of Tennessee state-level reporting), there is a conflict in the proposals as made by BellSouth. In its original proposals, BellSouth had changed these metrics from an analog measure to a benchmark measure. When that change occurred, BellSouth mistakenly did not remove the analog measure language from the Definition provisions and from the Report Structure provisions. Thus, BellSouth requests that the Authority reconsider its Order and remove the sentences in the Definition provisions that read "a parity measure is also provided showing completeness of BellSouth messages processed and transmitted via CMDS." In addition, BellSouth requests that the Authority modify the Report Structure provisions to remove the requirements for BellSouth aggregate data. None of these changes impacts the metrics themselves, but simply resolves conflicts between retail analog and benchmark language.

In addition, the penalties associated with these metrics are exorbitant and unrelated to the amount of damages a CLEC might incur as a result of BellSouth failing to meet the metrics. The penalties are structured so that a CLEC will be paid $1.00 for each usage record that is "late" regardless of the amount of time that the record is delayed. Usage records are provided for local, access and toll calls associated with the CLEC's end users being served by resale and UNE-P. In the case of resale, most of the records being provided are for originating local calls. As most providers provide local calling on a flat rate basis, the revenue at risk for these records is zero. For access calls associated with UNE-P served customers the revenue at risk is approximately $0.08 (an average toll call is approximately 4 minutes and the average access rate is no greater than $0.015 per minute for one end of the call). For toll calls originating from the CLEC's resale or UNE-P served customers (and to be billed by the CLEC) the revenue at risk is somewhat higher. Using the rates in BellSouth's Tennessee General Subscriber Services Tariff (Section A18.3.8) the revenues associated with an average toll call could be as high as $0.84 (4 minutes at a rate of around $0.21). If an operator surcharge were added, the call could be as much as $3.09 (using BellSouth's tariff rates for operator charges).

The real damage that would be experienced by a CLEC for delayed usage records being sent would actually be the delay in receiving payment for the calls represented on the delayed records. So for each day of delay, the financial loss would be one day's "float" on the revenue at risk. Assuming that the cost of capital is 20% annually (a high rate even for the capital markets a CLEC finds itself in today), then one operator assisted toll call (by far, the most expensive type of call and representing a tiny proportion of the overall mix of usage records) would be approximately $0.0017 per day delay. Given that "average" revenue per record is much lower than the case of the operator assisted toll call (since a great number of the records provided to CLECs are for local calls and access calls which have zero or extremely small revenues at risk) the actual damages incurred for the delay of an average record for one day is much smaller than $0.0017.

Since billing occurs on a monthly basis, it could be argued that a delay of even one day could cause the CLEC to risk delaying receipt of the revenues for an entire month. In this case, the financial penalty for the delay in sending that expensive operator assisted toll record would be roughly $0.05 per month. This estimate uses the highest average toll call scenario.

Obviously a penalty of $1.00 per record (20 times the value of the delay) far outweighs any reasonable damage that might result from a delay in sending usage records to the CLEC and is, therefore, punitive.

### 34. __TN-B-8: Recurring Charge Completeness__

The same product level disaggregation and retail analog issues identified in metric TN-B-1 (Invoice Accuracy) are present in this metric as well. Necessary modifications to resolve problems with metric TN-B-1 (Invoice Accuracy) for CLEC product level disaggregation should also be made in this metric, including changing the term "Interconnection Trunks" to "Interconnection." Further supporting BellSouth's contention that the disaggregation set by the Authority was a simple mistake is the fact that metrics B-8 (Recurring Charge Completeness) and B-9 (Non-Recurring Charge Completeness) reflect two similar measures. Thus, it is obvious that the parity with retail analog for Resale and the 90 percent benchmarks for UNE and Interconnection should have been the same for both measures.

### 35. __TN-B-9: Non-Recurring Charge Completeness__

The same product level disaggregation and retail analog issues identified in metric TN-B-1 (Invoice Accuracy) are present in this metric as well. Any modifications made by the Authority in metric TN-B-1 (Invoice Accuracy) for CLEC product level disaggregation should also be made in this metric, including changing the term "Interconnection Trunks" to "Interconnection." Further supporting BellSouth's contention that the disaggregation set by the

Authority was a simple mistake is the fact that metrics B-8 (Recurring Charge Completeness) and B-9 (Non-Recurring Charge Completeness) reflect two similar measures. Thus, it is obvious that the parity with retail analog for Resale and the 90 percent benchmarks for UNE and Interconnection should have been the same for both measures.

### 36. TN-M&R-1: Missed Repair Appointments

In this metric, the Authority has ordered disaggregation into 31 product types. This large level of product disaggregation (as noted earlier, Georgia only has 7) creates a number of problems. First, some of the individual product categories overlap. For example, the Resold Design product category includes records from the Resold PBX, Resold Centrex/Centrex-like, Resold BRI ISDN, and Resold PRI ISDN categories. Similarly, the Unbundled 2 wire xDSL Loops, and Unbundled 4 wire xDSL Loop product categories each contain records from the Unbundled ADSL, Unbundled HDSL, an UCL (short and long) categories. This overlap is significant because a single LSR reject could be counted multiple times thereby distorting the metric.

There are other problems in the product disaggregations that also need to be rectified. Specifically, the LNP product category needs to be removed from the disaggregation because once a number has been ported the records are not retained in BellSouth's maintenance OSS, and any troubles associated with it are the responsibility of either the CLEC or the Numbering Plan Administration Center (NPAC). In addition, the Enhanced Extended Loops (EELs) Dispatch category should be removed because in maintenance it is irrelevant whether a dispatch is involved. Finally, the Special Access to EELs Conversion product category should be deleted as it applies only to the ordering and provisioning processes.

There is also a conflict between the benchmark and retail analogs. As noted before, where there is a retail analog, it is inappropriate to have a benchmark measure. Given that for this metric each of the products listed in the disaggregation table has a corresponding retail analog, the Commission should change the benchmark to parity with retail. Each of the other states that have adopted this metric have used parity with retail as the measure, not a benchmark. Further, establishing a benchmark for this metric is inconsistent with the parity with retail measure that the Commission has set for metrics M&R-2 (Customer Trouble Report Rate), M&R-3 (Maintenance Average Duration), and M&R-4 (Percent Repeat Troubles within 30 Days).

The Authority should also reconsider its list of exclusions for this metric. It appears that the Authority inadvertently removed exclusions for LMOS code 7 (Test ok), LMOS code 8 (Found ok-in) and LMOS code 9 (Found ok-out) and WFA-NTF (No Trouble Found). Each of these exclusions was included in Exhibit DAC-1 of Dave Coon's Direct Testimony dated July 16, 2001, at p. 4-1. In the Order, the footnote to this metric does not mention any modification of the exclusions contained in BellSouth's measure, so BellSouth assumes that the exclusion was inadvertent. If it was not inadvertent, it is contrary to the evidence presented at the proceeding and should be reconsidered. Otherwise, the Commission is penalizing BellSouth for troubles that it did not cause, or it cannot find, which would create an opportunity for the CLECs to create penalties merely by calling in trouble reports when none exists.

**37. <u>TN-M&R-2: Customer Trouble Report Rate</u>**

The same issues identified in metric TN-M&R-1 (Missed Repair Appointments) are present in this metric as well. Necessary modifications required to resolve the problems in metric TN-M&R-1 (Missed Repair Appointments) should also be made in this metric.

**38. TN-M&R-3: Maintenance Average Duration**

The same issues identified in metric TN-M&R-1 (Missed Repair Appointments) are present in this metric as well. Any modifications made by the Authority in metric TN-M&R-1 (Missed Repair Appointments) should also be made in this metric.

**39. TN-M&R-4 : Percent Repeat Troubles within 30 Days**

The same issues identified in metric TN-M&R-1 (Missed Repair Appointments) are present in this metric as well. Necessary modifications required to resolve the problems in metric TN-M&R-1 (Missed Repair Appointments) should also be made in this metric.

**40. TN-M&R-5: Out of Service (OSS) > 24 Hours**

The same issues identified in metric TN-M&R-1 (Missed Repair Appointments) are present in this metric as well. Necessary modifications required to resolve the problems in metric TN-M&R-1 (Missed Repair Appointments) should also be made in this metric.

There is also a conflict between the Benchmark provision and the Business Rule provision. Specifically, this metric is designed to measure instances where a customer is out of service for more than 24 hours. Notwithstanding, the Authority has set benchmarks for time intervals less than 24 hours which are inconsistent with the purpose of the metric. For example, this metric will only capture data when service has been out for over 24 hours, it will not capture when service has been out for four hours, eight hours, or 16 hours, when a dispatch is required or for two hours, three hours, or four hours where no dispatch is required as the benchmark apparently contemplates.

This docket was not a means to regulate BellSouth's retail service requirements. In fact, all this does is impose superior service requirements on the CLECs as opposed to what BellSouth provides for its own retail service. If, in fact, the Authority is attempting to set some type of service standards on retail service, those standards need to apply for both the CLECs and BellSouth, otherwise they are discriminatory.

**41. TN-M&R-6: Average Answer Time – Repair Centers**

The Authority has set a level of disaggregation that is inconsistent with the overall goal of this metric, which is to report the average amount of time a customer is on hold when he calls a BellSouth repair center. Hold times are not product specific, as the Authority appears to imply by requiring product-level disaggregation. Regardless of your product type, you will be placed into queue if an attendant is not available to immediately take your call. Thus, the Authority should remove the product level disaggregation from this metric.

Finally, the two benchmarks for this metric are constructed in such a way that penalties could be paid twice for a single metric failure. The Authority should choose one benchmark for this metric, or remove the Tier 1 and Tier 2 enforcement mechanism.

**42. TN-M&R-7: Mean Time To Notify CLEC of Network Outages**

There is a conflict between the Benchmark provision and the Enforcement Mechanism provision of this metric. As noted in the benchmark, this metric is parity by design, which means that the systems are set up in such a way as to be impossible for BellSouth to discriminate against a CLEC. This finding of parity by design is inconsistent with the Authority having set up a Tier 1 and Tier 2 enforcement mechanism for the metric. Thus, the Authority should remove the Enforcement Mechanism provision from this metric. This is consistent with the other parity by design metrics adopted by the Authority such as OS/DA-1 (Speed to Answer Performance/Average Speed to Answer – Toll) and OS/DA-2 (Speed to Answer Performance/Percent Answered within *x* Seconds).

**43. TN-C-3: Collocation Percent of Due Dates Missed**

The Benchmark provision of this metric conflicts with the Authority's stated goal (as discussed earlier) of adopting benchmarks that represent the most stringent benchmark that has been adopted in other BellSouth states. Specifically, the Authority has set a benchmark of 100 percent, which exceeds the 95 percent standard adopted by the Georgia and Florida commissions. Thus, the Authority should reconsider its benchmark and adopt the 95 percent standard.

**44. D-1: Average Database Update Interval**

The Authority has modified the Business Rules provision to the detriment of this metric. Specifically, the Authority has changed the start time to begin when the LSR was received by the LCSC. This is inconsistent with the evidence presented at the hearing (and with the other state commissions), which provided that the start time would be upon the completion of the order, not when the LSR was received. The Authority's modification has resulted in a conflict between the Business Rules provision and the Calculation provision of the metric. BellSouth is unsure whether the change in the Business Rules provision was inadvertent or intentional, but either way the Authority should modify it to be consistent with the manner in which it was proposed, and have a start time that begins upon the completion of the order.

In addition, the Authority has taken a measure that is a parity by design measure, meaning it is impossible for BellSouth to discriminate against a CLEC because of the manner in which the systems are set up, and has attempted to create a benchmark for the measure. Thus, the Authority should remove the benchmark and instead indicate that this metric is a parity by design metric.

## V. MANY OF THE AUTHORITY'S METRICS ARE CORRELATED SUCH THAT A SINGLE PERFORMANCE FAILURE RESULTS IN PENALTIES BEING PAID UNDER MULTIPLE METRICS

While BellSouth has described above individual issues with a number of the measurements that the Authority has adopted, there is an additional overarching concern that is implicated by a number of the measurements, as adopted by the Authority. Specifically, a number of the measurements in the Authority's decision are correlated with one another, such that a failure in a single process would produce failures across multiple measurements. Below are details of the metrics that are correlated with one another:

A. There are two measurements of Order Completion Interval: TN-P-6 (Average Completion Interval) and TN-P-7 (Order Completion Interval Distribution). As the name implies, the Average Completion Interval is the time interval required to complete all orders for a given CLEC in a certain month, divided by the number of orders completed for that CLEC for that month. If the total time required to complete 5 orders was 20 days, the Average Completion Interval is 4 days. Metric TN-P-7 (Order Completion Interval Distribution) is the time distribution for the orders completed for a CLEC in a month. Using the 5-order example above, assume 3 orders were completed in an interval 0-5 days and 2 orders were completed in an interval between 5 and 10 days. The resulting measurement would be 60% in 0-5 days and 40% in 5-10 days. The key point is that both of these metrics measure installation intervals but each measurement simply expresses the installation interval differently. Thus, they are redundant. However, both of these measurements are part of the Authority's Tier 1 and Tier 2 enforcement mechanism. Simply stated, BellSouth will be subjected to double penalty for the same miss.

Aside from the double penalty payment, there is the complicated issue of how to make a parity determination when using interval measurements. As an example, how could one determine if metric TN-P-7 is in parity, assuming the following result:

Percent Orders completed within X days

| Interval (X days) | CLEC result | BellSouth result |
|---|---|---|
| 0-5 | 35% | 45% |
| 5-10 | 50 | 30 |
| 10-15 | 15 | 25 |

Where the interval between 0-5 would favor BellSouth retail, the 5-10 day interval favors the CLECs – to a greater degree than BellSouth was favored in the 0-5 interval. The only way to evaluate this is to weight the percentages with the interval. However, that would simply produce an average result, similar to measurement P-6. For that reason, metric TN-P-7 is not a necessary metric and should not be subject to enforcement.

B. The Order Completion Interval metrics TN-P-6 and TN-P-7 have been redefined to include the Firm Order Confirmation Interval, which is captured by metric TN-O-9. No additional time has been added to the Order Completion Interval for the additional work required to perform the FOC. Both are Tier I and Tier II measurements and both have many submetrics subject to enforcement. If an order requires a long time to process, it will fail the FOC interval measurement and likely affect the order completion measurement as well.

C. The measurements for Held Orders, Percentage of Orders Given Jeopardy Notices, Percent Missed Installation Appointments, Average Completion Interval and Order Completion Interval Distribution (metrics TN-P-1, TN-P-3, TN-P-4, TN-P-6, and TN-P-7) are also correlated. To explain this correlation, assume that a CLEC submitted a number of LSRs for one customer and that facilities are simply not available to meet the requested due dates for all of the orders. This situation can occur as a result of a CLEC's marketing plans, which may focus marketing to one business segment, an office park, an apartment complex, or an ISP. (While this example is based on a facility shortage, that is not the only failure that could cause failures in more than one of these measurements.) Assume that because facilities are not available to meet the requested due date, the orders result in "Held Orders", thereby missing the metric Mean Held Order Interval, TN-P-1. If the orders are held, they are, by definition, missed installation appointments since the orders would have been held past their appointed due dates. Therefore the orders would also result in a miss of metric TN-P-4 (Missed Installation Appointments). Since the orders were missed due to facility shortages, the orders would have been placed in jeopardy and would have impacted metrics TN-P-2 and TN-P-3, which respectively deal with Jeopardy Notice Interval and Percentage of Orders Given Jeopardy Notices. Finally, a lack of facilities means the time to complete the installation would be longer than if the facility shortage did not exist. As a result of the elongated installation time, the metrics TN-P-6 (Average Completion Interval) and TN-P-7 (Order Completion Interval Distribution) which, as discussed in the paragraphs above, measure the same installation intervals with different calculations, would be affected.

In summary, a single failure due to a facility shortage for one CLEC for one group of orders, would have created 6 separate failures in the following measurements:

TN-P-1 (Held Orders)

TN-P-2 (Average Jeopardy Notice Interval)

TN-P-3 (Percentage of Orders Given Jeopardy Notices)

TN-P-4 (Percent Missed Installation Appointments)

TN-P-6 (Average Completion Interval)

TN-P-7 (Order Completion Interval Distribution)

This situation can double if the CLEC orders are in a product category that has an apparent overlap with another product category. As discussed earlier, the products Resold PBX, Resold Centrex, Resold BRI ISDN, Resold PRI ISDN and Resold DID trunks are also part of the larger grouping Resold Design. If the CLEC orders are for Resold PBX, Centrex, ISDN or DID Trunks, there would be 12 measurement missed.

The Authority's Order specifies that all of the above measurements are part of the Tier 1 and Tier 2 enforcement mechanism. Depending on whether the product ordered is a Resale Service or UNE, and depending on whether the product is in product group that overlaps with another, BellSouth could be liable for penalty payments of 6 times the resale Provisioning Liquidated Damages Fee (*See*, Order at 4) provisioning rate of $100 up to 12 times the UNE Provisioning Rate of $400 – or $600 to $4800 <u>per affected transaction</u>. And this is just for Tier 1.

D. The metric TN-P-9 (Coordinated Customer Conversions Interval) is correlated with metrics TN-P-6 (Average Completion Interval) and TN-P-7 (Order Completion Interval Distribution). All three of these metrics measure the time it takes to complete an order and their product disaggregation is identical. To the extent that coordinated conversions exceed the 15 minute benchmark for the coordinated conversions interval, the failure will affect the TN-P-6 and TN-P-7 measurements.

E. Metric TN-P-10 (Hot-Cut Timeliness Interval and Average Interval) is correlated with metric TN-P-4 (% Missed Installation Appointments). The Hot Cut Timeliness Interval measures if the hot-cut was started on time – on time is defined within 15 minutes of the scheduled start time. The metric TN-P-4 also measures if a time-specific appointment was achieved. If the hot-cut was not started on time, the installation appointment would also be missed for that product disaggregation in TN-P-4, which captures the UNE, SL1 and SL2 product disaggregation of measurement TN-P-10.

F. Metric TN-P-14 (Percent of Timely Loop Modifications/De-Conditioning on xDSL Loops) is correlated with metrics TN-P-6 (Average Completion Interval) and TN-P-7 (Order Completion Interval Distribution) because the time required to modify and de-condition the loop is also included in the intervals captured in measurements TN-P-6 and TN-P-7.

G. Metric TN-P-21 (Percent LNP Missed Installation Appointments) is correlated with metric TN-P-4 (Percent Missed Installation Appointments) since the product disaggregation is the same. However, as discussed earlier, the product disaggregation for metric TN-P-21 is not appropriate for a measurement of LNP Missed Installation Appointments since it is not limited to the LNP product.

H. Metrics TN-B-5 (Usage Data Delivery Completeness), TN-B-6 (Usage Data Delivery and Timeliness), and TN-B-7 (Mean Time to Delivery Usage) are all directly correlated. They simply measure the usage data delivery interval at varying points in time:

TN-B-5 measures the usage delivered within 30 days

TN-B-6 measures the usage delivered within 6 days

TN-B-7 measures the average or mean time for usage data delivery

I. Metrics TN-M&R-5 (Out of Service > 24 hours), TN-M&R-2 (Maintenance Average Duration), and TN-M&R-1 (Missed Repair Appointments) are all correlated to an extent. If an appointment to repair an out of service trouble is missed, it will affect all three of these measurements.

J. The collocation metrics, TN-C-2 (Average Arrangement Time) and TN-C-3 (Percent of Due Dates Missed) are correlated. If the average arrangement time is longer than the benchmark, it is very likely that BellSouth will also fail the Percent of Due Dates Missed measurement.

For the foregoing reasons, the Order establishes a system of duplicative and compound penalties, which are inappropriate.

## VI. CONCLUSION

For the foregoing reasons, BellSouth respectfully urges the Authority to reconsider its Order, which imposes a system of performance measurements, benchmarks and enforcement mechanisms that violate Tennessee law. Notwithstanding the issues described above, BellSouth remains willing to submit voluntarily to a plan in Tennessee, which is identical in all respects to the SEEM plan in place in Georgia. BellSouth respectfully urges the Authority to enter an Order adopting BellSouth's proposal.

Respectfully submitted,

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ATTACHMENT A

DIFFERENCES BETWEEN DIRECTOR GREER'S HANDOUT USED AT THE APRIL 16, 2002 CONFERENCE AND ATTACHMENT A TO THE MAY 15, 2002

The handout and the exhibit differ as follows:

(1) While page 2 of the handout to Director Greer's motion requires the Enforcement Mechanism Plan to be implemented within 10 days, page 2 of the Attachment to the Order requires the plan to be implemented immediately;

(2) While page 7 of the handout to Director Greer's motion requires Average Response Time and Response Interval (Pre-Ordering/Ordering) to be implemented within 10 days, page 7 of the Attachment to the Order requires immediate implementation;

(3) While page 11 of the handout to Director Greer's motion requires Interface Availability (Maintenance & Repair) to be implemented within 10 days, page 11 of the Attachment to the Order requires immediate implementation;

(4) While page 13 of the handout to Director Greer's motion requires Response Interval (Maintenance & Repair to be implemented within 10 days, page 13 of the Attachment to the Order requires immediate implementation;

(5) While page 17 of the handout to Director Greer's motion requires Loop Make Up-Response Time-Electronic to be implemented within 10 days, page 17 of the Attachment to the Order requires the plan to be implemented immediately;

(6) While page 19 of the handout to Director Greer's motion requires Acknowledgement Message Timeliness be implemented within 10 days, page 19 of the Attachment to the Order requires the plan to be implemented immediately;

(7) While page 21 of the handout to Director Greer's motion requires Acknowledgement Message Completeness within 10 days, page 21 of the Attachment to the Order requires the plan to be implemented immediately,

(8) While page 28 of the handout to Director Greer's motion requires Flow-Through Error Analysis to be implemented within 10 days, page 28 of the Attachment to the Order requires the plan to be implemented immediately;

(9) While page 33 of the handout to Director Greer's motion requires Percent Rejected Service Requests to be implemented within 10 days, page 33 of the Attachment to the Order requires the plan to be implemented immediately;

(10) While page 37 of the handout to Director Greer's motion requires Reject Interval to be implemented within 10 days, page 37 of the Attachment to the Order requires the plan to be implemented immediately;

(11) While page 43 of the handout to Director Greer's motion requires Service Inquiry with LSR Firm Order Confirmation Response Time Manual to be implemented within 10 days, page 43 of the Attachment to the Order requires the plan to be implemented immediately;

(12) While page 46 of the handout to Director Greer's motion requires Firm Order Confirmation and Reject Response Completeness to be implemented within 10 days, page 46 of the Attachment to the Order requires the plan to be implemented immediately;

(13) While page 50 of the handout to Director Greer's motion requires Mean Held Interval & Distribution Intervals to be implemented within 10 days, page 50 of the Attachment to the Order requires the plan to be implemented immediately;

(14) While page 54 of the handout to Director Greer's motion requires Percentage of Orders Given Jeopardy Notices to be implemented within 10 days, page 53 of the Attachment to the Order requires the plan to be implemented immediately;

(15) While page 66 of the handout to Director Greer's motion requires Average Completion Notice Interval to be implemented within 10 days, page 65 of the Attachment to the Order requires the plan to be implemented immediately;

(16) While page 68 of the handout to Director Greer's motion requires Coordinated Customer Conversions Interval to be implemented within 10 days, page 67 of the Attachment to the Order requires the plan to be implemented immediately;

(17) While page 71 of the handout to Director Greer's motion requires Coordinated Customer Conversions-Hot Cut Timeliness Within Interval And Average Interval to be implemented within 10 days, page 70 of the Attachment to the Order requires the plan to be implemented immediately;

(18) While page 72 of the handout to Director Greer's motion requires Coordinated Customer Conversions-Average Recovery Time to be implemented within 10 days, page 71 of the Attachment to the Order requires the plan to be implemented immediately;

(19) While page 74 of the handout to Director Greer's motion requires Hot Cut Conversions-Percentage of Provisioning Troubles Received Within 7 Days of a Completed Service Order to be implemented within 10 days, page 72 of the Attachment to the Order requires the plan to be implemented immediately;

(20) While page 77 of the handout to Director Greer's motion requires Percent Provisioning Troubles Within 30 Days Of Service Order Activity Completion to be implemented within 10 days, page 75 of the Attachment to the Order requires the plan to be implemented immediately;

(21) While page 79 of the handout to Director Greer's motion requires Service Order Accuracy to be implemented within 10 days, page 77 of the Attachment to the Order requires the plan to be implemented immediately;

(22) While page 82 of the handout to Director Greer's motion requires Total Service Order Cycle Time to be implemented within 10 days, page 80 of the Attachment to the Order requires the plan to be implemented immediately;

(23) While page 84 of the handout to Director Greer's motion requires LNP-Average Time Out of Service For LNP Conversions to be implemented within 10 days, page 82 of the Attachment to the Order requires the plan to be implemented immediately;

(24) While page 85 of the handout to Director Greer's motion requires LNP-Percentage of Time BellSouth Applies the 10-Digit Trigger Prior To The LNP Order Due Date, page 83 of the Attachment to the Order requires the plan to be implemented immediately;

(25) While page 87 of the handout to Director Greer's motion requires LNP-Percent Missed Installation Appointments to be implemented within 10 days, page 85 of the Attachment to the Order requires the plan to be implemented immediately;

(26) While page 89 of the handout to Director Greer's motion requires Invoice Accuracy to be implemented within 10 days, page 87 of the Attachment to the Order requires the plan to be implemented immediately;

(27) While page 91 of the handout to Director Greer's motion requires Mean Time To Deliver Invoices to be implemented within 10 days, page 89 of the Attachment to the Order requires the plan to be implemented immediately;

(28) While page 94 of the handout to Director Greer's motion requires Usage Data Delivery Accuracy to be implemented within 10 days, page 92 of the Attachment to the Order requires the plan to be implemented immediately;

(29) While page 95 of the handout to Director Greer's motion requires Usage Data Delivery Completeness to be implemented within 10 days, page 93 of the Attachment to the Order requires the plan to be implemented immediately;

(30) While page 96 of the handout to Director Greer's motion requires Usage Data Delivery Timeliness to be implemented within 10 days, page 94 of the Attachment to the Order requires the plan to be implemented immediately;

(31) While page 97 of the handout to Director Greer's motion requires Mean Time To Deliver Usage to be implemented within 10 days, page 95 of the Attachment to the Order requires the plan to be implemented immediately;

(32) While page 98 of the handout to Director Greer's motion requires Recurring Charge Completeness to be implemented within 10 days, page 96 of the Attachment to the Order requires the plan to be implemented immediately;

(33) While page 99 of the handout to Director Greer's motion requires Non-Recurring Charge Completeness to be implemented within 10 days, page 97 of the Attachment to the Order requires the plan to be implemented immediately;

(34) While page 101 of the handout to Director Greer's motion requires Missed Repair Appointments Disaggregation to be implemented within 10 days, page 99 of the Attachment to the Order requires the plan to be implemented immediately;

(35) While page 103 of the handout to Director Greer's motion requires Customer Trouble Report Rate Disaggregation to be implemented within 10 days, page 101 of the Attachment to the Order requires the plan to be implemented immediately;

(36) While page 105 of the handout to Director Greer's motion requires Maintenance Average Duration Disaggregation to be implemented within 10 days, page 103 of the Attachment to the Order requires the plan to be implemented immediately;

(37) While page 107 of the handout to Director Greer's motion requires Percent Repeat Troubles Within 30 Days Disaggregation to be implemented within 10 days, page 105 of the Attachment to the Order requires the plan to be implemented immediately;

(38) While page 109 of the handout to Director Greer's motion requires Out Of Service>24 Hours Disaggregation to be implemented within 10 days, page 107 of the Attachment to the Order requires the plan to be implemented immediately;

(39) While page 111 of the handout to Director Greer's motion requires Average Answer Time-Repair Centers Disaggregation to be implemented within 10 days, page 109 of the Attachment to the Order requires the plan to be implemented immediately;

(40) While page 112 of the handout to Director Greer's motion requires Mean Time To Notify CLEC of Network Outages to be implemented within 10 days, page 110 of the Attachment to the Order requires the plan to be implemented immediately;

(41) While page 113 of the handout to Director Greer's motion requires Collocation Average Response Time to be implemented within 10 days, page 111 of the Attachment to the Order requires the plan to be implemented immediately;

(42) While page 114 of the handout to Director Greer's motion requires Collocation Average Arrangement Time to be implemented within 10 days, page 112 of the Attachment to the Order requires the plan to be implemented immediately;

(43) While page 115 of the handout to Director Greer's motion requires Collocation Percent Of Due Dates Missed to be implemented within 10 days, page 113 of the order attachment requires the plan to be implemented immediately;

(44) While page 120 of the handout to Director Greer's motion requires Percent Database Update Accuracy to be implemented within 10 days, page 118 of the Attachment to the Order requires the plan to be implemented immediately;

(45) While page 122 of the handout to Director Greer's motion requires Percent NXXs And LRNs Loaded by the LERG Effective Date to be implemented within 10 days, page 120 of the Attachment to the Order requires the plan to be implemented immediately;

(46) While page 123 of the handout to Director Greer's motion requires Timeliness to be implemented within 10 days, page 121 of the Attachment to the Order requires the plan to be implemented immediately;

(47) While page 124 of the handout to Director Greer's motion requires Accuracy to be implemented within 10 days, page 122 of the Attachment to the Order requires the plan to be implemented immediately;

(48) While page 125 of the handout to Director Greer's motion requires Mean Interval to be implemented within 10 days, page 123 of the Attachment to the Order requires the plan to be implemented immediately;

(49) While page 128 of the handout to Director Greer's motion requires Trunk Group Performance-Aggregate to be implemented within 10 days, page 126 of the Attachment to the Order requires the plan to be implemented immediately;

(50) While page 131 of the handout to Director Greer's motion requires Trunk Group Performance-CLEC Specific to be implemented within 10 days, page 129 of the Attachment to the Order requires the plan to be implemented immediately.

# B-3: Percent Daily Usage Feed Errors Corrected in X Business Days

## Definition

Measures the timely correction of Daily Usage Feed (DUF) errors in record information and Pack formats measured separately. Errors included (1) Pack Failure errors and (2) EMI content errors in records.

## Exclusions

- Usage that cannot be corrected and resent or usage that the CLEC doesn't want Retransmitted.
- CLEC Problem/Issue/File Retransmission forms disputed by BellSouth SMEs that do not result in an EMI error.
- CLEC notification received by BellSouth > 10 business days from transmission date of errored messages or packs.

## Business Rules

This measure will provide the % of errors corrected in X Business days.

Pack Failure errors are defined as a DUF header/trailer error containing one or more of the following conditions: Grand total records not equal to records in pack or sequence/invoice numbers for a from RAO is not sequential

EMI content errors are defined as those records with errors contained in the EMI detail records that cause a message to be unbillable by the CLEC

Only notification received via the CLEC Problem/Issue/File Retransmission form will be included in this measure. To locate the form, go to the PMAP web site (http://www.pmap.bellsouth.com/) and click the Documentation Downloads link, then select the "CLEC Problem/Issue/File Retransmission form."

When circumstances arise for multiple content errors it is not necessary for the form to be filled out in its entirety, the CLECs agree to provide sufficient information for content error research so that a thorough investigation and resolution can be completed.

For each type error condition, a new CLEC Problem/Issue/File Retransmission form should be submitted.

EMI content errors should be attached in a separate file from the CLEC Problem/Issue/File Retransmission form

Elapsed time is measured in business days.

The clock starts when BellSouth receives CLEC's Problem/Issue/File Retransmission form.

The clock stops when BellSouth provides the corrected usage to the CLEC using the predesignated DUF delivery method.

This measure applies only to CLECs that are ODUF and ADUF participants

## Calculation

**Timeliness of Daily Usage EMI Content Errors Corrected** = (a / b) X 100

- a = Total number of Daily Usage Records with EMI Content Errors Corrected in the reporting month within 10 Business Days.
- b = Total number of Daily Usage Records with EMI Content Errors corrected in reporting month.

**Timeliness of Daily Usage Pack Format Errors Corrected** = (c / d) X 100

- c= Total number of Daily Usage Packs with Format Errors Corrected in the reporting month within 4 Business Days.
- d = Total number of Daily Usage Packs with Format Errors corrected in reporting month

## Report Structure

- CLEC Specific
  - Total number of BST disputed Daily Usage Records with EMI Content Errors received in reporting month.
  - Total number of Daily Usage Records with EMI Content Errors received in reporting month.
  - Total number of BST disputed Daily Usage Packs with Format Errors received in reporting month
  - Total number of Daily Usage Packs with Format Errors received in reporting month
- CLEC Aggregate
- Geographic Scope
  - Region

## Data Retained

| Relating to CLEC Experience | Relating to BellSouth Performance |
|---|---|
| • Report month<br>- BellSouth Recorded<br>- Non-BellSouth Recorded | • None |

## SQM Level of Disaggregation - Analog/Benchmark

| SQM Level of Disaggregation | SQM Analog/Benchmark |
|---|---|
| • Region | • Diagnostic |

## SEEM Measure

| SEEM Measure | | |
|---|---|---|
| No | Tier I | |
| | Tier II | |

## SEEM Disaggregation - Analog/Benchmark

| SEEM Disaggregation | SEEM Analog/Benchmark |
|---|---|
| • Not Applicable | • Not Applicable |

# B-3A: Percent Billing Errors Corrected in X Days

## Definition

Measures timely carrier bill adjustments.

## Exclusions

Billing adjustments requests that are rejected by BellSouth or disputed by BellSouth.

Adjustments that are initiated by BellSouth.

## Business Rules

This measure applies to CLEC wholesale bill adjustments. IXC Access billing adjustment requests are not reflected in this measure. Elapsed time is measured in business days. Clock starts when BellSouth receives the ALECs Billing Adjustment Request (BAR) form (BAR form and instructions found at WWW.interconnection.bellsouth.com/forms/html/billing & collections.html) and the clock stops when adjustments is made to bill through ACATS or BOCRIS (generally next CLEC bill unless adjustment request after middle of the month). BellSouth will report separately those adjustment requests that are disputed by BellSouth.

## Calculation

**Percent Billing Errors Corrected in 45 Days** = (a / b) X 100

- a = Number of BellSouth Adjustments in 45 Days
- b = Total Number of Adjustment Requests in Reporting Period

## Report Structure

- CLEC Specific
- CLEC Aggregate
- Geographic Scope:
- State Specific

## Data Retained

| Relating to CLEC Experience | Relating to BellSouth Performance |
|---|---|
| • Number of BellSouth Adjustments in 45 days<br>• Total number of Billing Adjustment Requests in Reporting Period<br>• Number of Adjustments disputed by BellSouth (reported separately) | • None |

## SQM Disaggregation - Retail Analog/Benchmark

| SQM Level of Disaggregation | SQM Analog/Benchmark |
|---|---|
| • State | • Diagnostic |

## SEEM Measure

| SEEM Measure | | |
|---|---|---|
| No | Tier I | |
| | Tier II | |

## SEEM Disaggregation - Analog/Benchmark

| SEEM Disaggregation | SEEM Analog/Benchmark |
|---|---|
| • Not Applicable | • Not Applicable |

## CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2002, a copy of the foregoing document was served on the following parties, via the method indicated:

| | |
|---|---|
| [ ] Hand<br>[✓] Mail<br>[ ] Facsimile<br>[ ] Overnight | James Lamoureux, Esquire<br>AT&T<br>1200 Peachtree St., NE<br>Atlanta, GA 30309 |
| [ ] Hand<br>[✓] Mail<br>[ ] Facsimile<br>[ ] Overnight | Henry Walker, Esquire<br>Boult, Cummings, et al.<br>P. O. Box 198062<br>Nashville, TN 37219-8062 |
| [ ] Hand<br>[✓] Mail<br>[ ] Facsimile<br>[ ] Overnight | Jon E. Hastings, Esquire<br>Boult, Cummings, et al.<br>P. O. Box 198062<br>Nashville, TN 37219-8062 |
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