BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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

CLEC RESPONSE TO BELLSOUTH'S MOTION TO RECONSIDER

The CLEC Coalition[1] submits the following response to the "Motion for Reconsideration" ("Motion") filed by BellSouth Telecommunications, Inc. ("BellSouth") in the above-captioned proceeding. As outlined below, BellSouth's Motion should be denied.

I. Jurisdiction

BellSouth's first attack on the order is that the Authority lacks jurisdiction to order an enforcement mechanism. This is incorrect. Almost two years ago, the Tennessee Regulatory Authority ("TRA") unanimously ruled that the agency has the legal power to adopt performance measures and enforcement mechanisms. Docket 99-00430, BellSouth/DeltaCom Arbitration, Interim Order filed August 11, 2000. As the agency noted in the Order issued May 14, 2002, in this docket (the "Order"), "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." Order, at 28.

[1] For purposes of this response, the Coalition members include Access Integrated Network, Inc.; Birch Telecom, Inc.; MCI WorldCom Communications, Inc., MCImetro Access Transmission Services, LLC and Brooks Fiber Communications of Tennessee, Inc. (collectively "WorldCom"); AT&T Communications of the South Central States, LLC.; and, DIECA Communications, Inc. d/b/a Covad Communications Company.

The TRA wrote in the DeltaCom Order, at 12, that "numerous courts have held that state commissions may impose performance measures and enforcement mechanisms in interconnection agreements." The Order cites three such cases. All hold that, in the context of an arbitration proceeding conducted pursuant to Section 252 of the federal Telecommunications Act, state commissions may include performance measures and enforcement mechanisms in an interconnection agreement.

As the regional Bell carriers seek approval to re-enter the long distance market under Section 271 of the Act, more and more states have adopted performance measures and enforcement mechanism plans similar to Tennessee's. Florida, for example, adopted a plan similar to Tennessee's on February 14, 2002.[2] Despite the growing number of states adopting such plans, either in the context of a Section 252 arbitration agreement or in a generic proceeding, the Coalition is not aware of any judicial decision anywhere in the country -- and there is none cited in BellSouth's Motion – holding that a state commission lacks the authority to adopt and enforce such requirements.

Indeed, without benefit of a single supporting judicial precedent, BellSouth insists that the TRA has no jurisdiction to adopt and enforce performance measures and enforcement mechanisms. Even BellSouth, however, does not believe in its own position.

First, BellSouth concedes, as it must, that the courts have held that interconnection agreements arbitrated by state commissions may include performance standards and provision for enforcement. Motion, at 7. As previously noted, there are apparently no court cases

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[2] The TRA has taken judicial notice of the Florida order as well as orders from Texas and Georgia. See. Tr. P.209.

holding otherwise. BellSouth then argues, however, that these rulings do not apply to a "generic" proceeding which is designed to create a plan that would apply to all arbitration proceedings. *Id.* That distinction is frivolous. As the TRA pointed out, and as BellSouth is aware, this generic proceeding grew out of the DeltaCom arbitration and was initiated at BellSouth's request so that the parties and the agency could address these matters in one docket rather than re-litigate the same issues in each arbitration proceeding. Order at footnote 2. BellSouth can hardly pretend that the agency has any more jurisdiction in a two-party arbitration proceeding than it does in a "generic" arbitration, the results of which will be incorporated, unless the parties agree otherwise, in other interconnection agreements.

Second, BellSouth itself has proposed that the TRA adopt performance measures and self-effectuating enforcement mechanisms (BellSouth's "SEEM" plan) and so argued in the DeltaCom arbitration and in this docket. *See* Motion at p.4, footnote 3. Clearly, if the TRA has the power to adopt and enforce self-effectuating enforcement mechanisms proposed by BellSouth, the TRA also has the power to adopt and enforce enforcement mechanisms proposed by other parties. To avoid this conundrum, BellSouth contends that the agency can, indeed, adopt such a plan but only if BellSouth "consents" to the agency's decision. In other words, the agency has no power under state or federal law to impose a fine greater than $50.00 but, if BellSouth "consents," the agency's powers magically expand to allow it to impose potentially millions of dollars in automatic penalties as proposed in BellSouth's SEEM plan.

Based on federal and state law, the TRA either has the power to adopt and enforce a plan such as this or it does not. The Authority's powers in this regard cannot depend upon the consent of the parties; otherwise BellSouth could withdraw its "consent" the first time the

TRA decided to change the plan over BellSouth's objections. There is no legal basis – and BellSouth cites none – for the notion that an agency's legal jurisdiction can be enlarged merely by the consent of those who appear before the agency. Since BellSouth has proposed that the TRA adopt BellSouth's own plan of performance measures and self-effectuating enforcement mechanisms and since BellSouth presumably believes the TRA has the legal power to adopt and enforce that plan, the company can hardly argue that the agency lacks the power to adopt and enforce measures and mechanisms proposed by other parties.

Finally, BellSouth argues at some length that, in the absence of a state law authorizing the TRA to adopt self-effectuating enforcement mechanisms, the TRA has no authority to do so. As previously discussed, BellSouth apparently does not believe it's own argument. More to the point, however, BellSouth concedes that, under the Telecommunications Act, "certain regulatory duties that relate to implementation of the Act . . . . may devolve to . . . . state commissions." Motion, at 9.

One of the duties of the TRA under the Act is to "ensure that CLECs have nondiscriminatory access to all essential unbundled network elements." Order, at 9. *See* 47 U.S.C. § 251. The TRA, along with the FCC and a growing number of states, have come to the conclusion that the only means of enforcing that requirement of non-discriminatory access is through the establishment of measures with benchmarks and penalties. Even BellSouth has implicitly agreed with this conclusion by devising its own plan. State commissions have therefore adopted such plans, either in arbitration proceedings or, as in Georgia, North Carolina and Florida, in generic proceedings. Jurisdiction to adopt measurements and enforcement plans has not rested with a specific state legislative mandate, but rather with the state commission's general jurisdiction over telecommunication carriers and a legislative

mandate to promote competition in those states. In Florida for example, the Commission found that it was vested with jurisdiction because of its statutory requirement to provide "regulatory oversight ... for the development of fair and effective competition. . . ." Fla. order at 8. In North Carolina, in the face of a similar argument by BellSouth, the Commission found that BellSouth was required to adopt the ordered remedy plan because "it is the linchpin in ensuring compliance of BellSouth in the provision of interconnection to competitors, both as a general matter, and as part of the Section 271 approval process." NC Order at 61. Similarly, the Tennessee legislature has directed the TRA to promote "competition in all telecommunications services markets" (T.C.A. § 65-4-123) and specifically directed the agency to insure that CLECs have "non-discriminatory access" to all "features, functions, and services" of BellSouth. T.C.A. § 65-4-124. Moreover, pursuant to Section 252 of the Act, state commissions have the power to arbitrate interconnection agreements and to include in those agreements "any issues" requested by the parties, including performance measures and enforcement mechanisms.[3] Therefore, as apparently every reviewing court has agreed, a state commission like the TRA has the power under state and federal law to adopt and enforce these plans.[4]

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[3] Relying on the Act, the U.S. District Court for the Northern District of Florida has upheld the power of the Florida Commission to establish performance measures and self-executing remedies. *See MCI v. BellSouth*, 112 F. Supp. 2d 1286, 1298 (N.D. Fla., 2000)

[4] The Colorado Commission took a different approach to the state jurisdiction issue. The Commission ruled that Qwest could either agree to the Colorado plan or risk having the Commission oppose Qwest's 271 application. *See* Docket 01I-041T, Order of Sept. 26, 2001 at 14-15.

II. Sunshine Law

BellSouth's Motion next argues that the TRA acted "inconsistent with both the letter and, more importantly, the spirit" of Tennessee's Public Meetings Act, T.C.A. § 8-44-101 *et seq.*

This argument is somewhat confusing because it appears to be more of an attack on the integrity of one of the Directors than a legal basis for reconsidering the Authority's Order.

The Public Meetings Act requires that the TRA deliberate in public. Such deliberation sessions have been described as "the informal conference discussion of a decision." *South Central Bell v. Tenn. Public Service Comm.*, 579 S.W. 2d 429, 434 (Tenn. Ct. App. 1979). Although the TRA routinely records all such discussions, that is not a requirement of the Act. *Id.*

BellSouth contends that the Act was violated because (1) Director Greer's oral explanation of his motion differed in some respects from a written copy of his motion which was given to the court reporter and distributed to the other Directors prior to the vote and (2) the written Order differed in some respects from the oral and written motion. Because of these alleged differences, BellSouth presumes that the Directors must have met at a later time, in secret, before issuing the order.

But such discrepancies, even if they were material (and the Coalition does not agree that they are) do not constitute a violation of the Open Meetings Act.

As the Court of Appeals has held, nothing in the Act requires the Directors to orally announce their reasons for making decisions, nor does the Act require that the agency's written order reflect the oral discussions given during an Authority conference. In *AAA Wise Express v. Cochran, et al.* (unpublished opinion of the Tennessee Court of Appeals, June 8,

1982, copy attached) the Court considered and rejected the same argument BellSouth now makes.

In that case, the three members of the Public Service Commission rejected a motor carrier application by a voice vote but did not, in their oral discussions, address specifically the statutory criteria for granting or denying an application. Those criteria were addressed, however, in the agency's subsequent written order. Like BellSouth, the disappointed carrier argued that "the Commission must have met at some other time" before issuing the written order.

The Court disagreed, holding that there was "nothing in the record" to indicate that there had been another, secret meeting and that "in the absence of evidence to the contrary, we must presume that the Commission followed the mandate" of the Act. Opinion, at 7.

Similarly, BellSouth offers no evidence that the Directors had a subsequent meeting to deliberate on the conclusions contained in the Order. Instead, the carrier offers innuendo and character attacks.

The TRA complied fully with the Open Meetings Act. The Directors deliberated in a public meeting. Director Greer's motion was placed in the record and the record was made available to the public the following day. All three Directors reviewed and signed the final Order which, therefore, presumptively reflects their views on these issues. BellSouth's argument has no merit.

III. and IV. Timetable for Implementation and Specific Objections to Metric's and Enforcement Mechanism.

Sections III and IV of BellSouth's Motion raise a number of interrelated objections to the substance of the TRA's plan and the agency's timetable for implementation. To clarify

the issues, the Coalition has organized BellSouth's objections in a matrix form and submits the following responses to each objection.

BELLSOUTH COMMENTS[5]	RESPONSES
Enforcement mechanisms adopted by the Authority are punitive in nature and, in some instances, are duplicative, which results in BST paying multiple fines for a single performance failure.(page 1)	BellSouth exaggerates the impact of the TRA's decision. The Authority properly reviewed its claims of correlated metrics and levels of disaggregation that should not be in the remedy plan and rejected them.
Authority adopted a Delta value much lower than that found in other states that have adopted SEEM(TN is 0.25 for both Tier 1 & Tier 2 penalties, while GA is 0.5 for Tier 1 penalties and 0.35 for Tier 2 penalties; LA uses 1.0 for both Tier 1 & Tier 2). In the case of Tier 1, reducing the Delta by ½ results in a smaller parity window & will make it appear BST is not providing service to CLECs at parity with the service provides to itself, when, in fact, the service is in parity.(page 1)	BellSouth objects to the Authority adopting a value of 0.25 for the Delta parameter, saying this value "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" (a Type I error). BellSouth ignores the Type II error, a conclusion that BellSouth is providing parity service when, in fact, it is providing service to the CLECs that is inferior to the service it provides to itself. The balancing approach to statistical testing recognizes that both types of errors are important and need to be considered when specifying the value for delta. The Authority was correct in judging that differences corresponding to a delta value of 0.25 constitute material obstacles to competition for which the CLECs require protection. BellSouth's motion offers no basis for its assertion that the delta value set by the Authority will place it at greater risk than the CLECs.
The FCC found that "the existing Service Performance Measurements & Enforcement Mechanisms (SEEM plans) currently in place for GA & LA provide assurance that these local markets will remain open after BST receives section	The FCC noted that "both GA & LA Commissions anticipate modifications to BST's SQM from their respective pending six-month reviews." Many of the modifications, seemingly supported by the GA Staff, from the GA 6-Month Review mirror those ordered by the TRA. Further, the FCC encourages "[a]n extensive and rigorous evaluation" of the ILEC's performance by the **individual**

[5] BellSouth Telecommunications, Inc.'s Motion for Reconsider, Docket 01-00193, In Re: Docket To Establish Generic Performance Measurements, Benchmarks and Enforcement Mechanisms For BellSouth Telecommunications, Inc., May 29, 2002.

[6] Memorandum Opinion and Order, *In the Matter of Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18,354 ¶ 53 (F.C.C. June 30, 2000) (No. CC 00-65, FCC 00-238) ("*SWBT Texas Order*").¶ 54.

271 authorization.(page 2)	states.[6] Indeed, the FCC has acknowledge that the individual states may set performance standards at levels at or above what is necessary to meet the statutory nondiscrimination standard.[7] In reviewing past 271 applications, the FCC has made it clear that it is looking at the state's involvement in overseeing and adjusting plans to ensure that they protect CLECs from backsliding from the ILEC. The Commission has not commented on particular components of plans as much as the state regulatory effort to keep them relevant to current market conditions as the TRA is doing here.
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 BST. For instance, the GA SEEM has 74 Tier 1 and 98 Tier 2 measures to which penalties are attached as compared to the TN enforcement plans, which has 975 Tier 1 and 1004 Tier2 measures to which penalties are attached.(page 2)	The TN enforcement measures are similar to the enforcement measures ordered by the FL PSC. The FL PSC, similarly committed to an effective remedy plan, ordered 830 Tier I enforcement measures and 799 Tier II enforcement measures. TN primarily has required the appropriate disaggregation in the remedy plan to capture discrimination in delivery of the product the CLEC uses to enter the market. The per occurrence payment should be focussed at the product or process step (as captured by new measures added to the plan) where the CLEC receives inferior service. The TRA appropriately recognized this critical deficiency in the BST plan.
The implementation schedule imposed by the Authority is unreasonable.(page 19)	Some aspects of the Order do not require additional programming. Given that the TRA adopted the BST business rules for the SQM, in most cases, much of what was ordered is currently being reported on today. BellSouth's current reporting in TN is based on the BST Georgia SQM. Much of the disaggregation and many of the performance standards ordered by TN are the basis for the existing BST performance reporting in TN. As it relates to the enforcement plan, the TRA adopted the Truncated Z methodology for making compliance determinations for parity measures. BST's SEEM applies this same methodology. Therefore, no additional programming would be necessary to implement this methodology for compliance determinations. Additionally, the disaggregation for the enforcement measures is similar to the Florida PSC enforcement measure disaggregation, especially for provisioning and maintenance measures. This minimizes some of the coding alluded to by BST given that BST has many opportunities for code reuse. BellSouth gives that impression that all measures possibly requiring additional software must be changed "immediately". The TRA was very thoughtful in allowing 90 days for measures that would require more effort. Whether it's regarding it's refusal to do state specific or CLEC

(Footnote cont'd from previous page.)

[7] *SWBT Texas Order* ¶ 55 & n.102. When a state determines its appropriate performance levels by undertaking a rigorous proceeding in collaboration with CLECs, the FCC is much more likely to rely on those standards and measurements in its own analysis. *Id.* ¶ 56.

	specific reporting, or its requests for delay to doing so, BellSouth has been very vague about what the specific problems are that require additional time or make the change impossible. The TRA should, at the very least, demand more specificity. For instance, after the NY metrics were adopted in Case 97-C-0139, Verizon (then Bell Atlantic) sought to delay implementing a business rule change for confirmations the NY PSC had adopted until a new system was brought on line. The PSC denied the request because "The company has not fully explained what specific capabilities its existing systems lack that prevent resent confirmations due to Bell Atlantic-New York error from being included in this measurement, why is it not possible to use workarounds with existing systems until "Request Manager" is available, and exactly how 'Request Manager' will solve the problem. Also, it is not clear how the schedule for installing 'Request Manager' was determined, and whether Bell Atlantic-New York made any efforts to expedite the schedule." [8] BST's reconsideration request lack similar explanations of exactly why they cannot implement the TRA's directives on time or at all.
OSS Interface Availability There is no reason to require state specific reporting and the Authority should remove the state specific requirement from the Report Structure provision.(page 24)	Availability relates to having access to a given function. Given the possible diversity of the network design, load balancing could sometime restrict a particular server to traffic from a give state. Therefore, state-specific reporting would be essential because CLECs, having access to a function in one state, may not have that access in another state due to their server.
Interface Availability(M&R) There is no reason to require state specific reporting and the Authority should remove the state specific requirement from the Report Structure provision.(page 26)	Availability relates to having access to a given function. Given the possible diversity of the network design, load balancing could sometime restrict a particular server to traffic from a give state. Therefore, state-specific reporting would be essential because CLECs, having access to a function in one state, may not have that access in another state.
Acknowledgement Timeliness **Acknowledgement Completeness** Given the Regional nature of these metrics, combined with the fact that not every CLEC will be eligible (i.e., those using an aggregator) 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.(page 26)	This issue has been overcome in other states. Both the GA & FL remedy plans have this measure as both a Tier 1 & Tier 2 measure.As the TRA recognized, these metrics have an impact on CLECs being able to stay in the market and compete and require remedies for poor service to go to the CLEC as well as to the state. If the CLECs cannot stay in the market long enough because they are losing revenues for customers regained or retained due to BST discrimination, then the Tier II remedies go away as well because activities decrease or dry up completely.
%Flow Through Service Requests(Summary) % FlowThrough Service Requests(Detail)	

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[8] The New York Public Service Commission's June 30, 1999, order in Case 97-C-0139, Proceeding on motion of the Commission to Review Service Quality Standards for Telephone Companies, Appendix pg. 15.

a. The Authority has established future benchmarks that exceed the most stringent benchmark found in other BellSouth states, which contradicts the Authority's Order that states "that represents 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."(page 28)	a. It is clear from BellSouth's motion on the flow-through measurement that BellSouth is looking to lower the benchmarks and search for any rationale possible not to provide parity flow-through for CLEC LSRs. BellSouth's first rationale (most stringent benchmark) misses the point that the Authority made with the PM order: BellSouth must provide flow-through of CLEC orders in the same manner as BellSouth provides to its retail operations. BellSouth itself claims that "flow-through has always been a parity analog, not a benchmark." *BellSouth Motion for Reconsideration page 29* The fact remains that BellSouth provides a very high level of flow-through for its retail operations and with the Authority's order, BellSouth must also provide a high level of flow-through for CLEC orders.
b. Other states only require BellSouth to report at the state level. Reporting at the state level will have smaller volumes as well as different types of orders. The Authority should lower the benchmarks to take into account the smaller universe and mix of order types.(page 28)	b. BellSouth's second argument against the ordered flow-through benchmarks indicates the ordered benchmarks in other states were set based on a regional report structure. BellSouth also indicates they do not want the state specific report structure, however, they do not provide any argument to support this request. This argument should also be denied. All benchmarks are (or should be) set to support all competitors, regardless of business plans or volume. Reducing the state specific benchmarks for this reason does nothing but provide BellSouth with more ways to discriminate against CLECs operating in Tennessee.
c. The Authority is requiring BellSouth to provide mechanized ordering capability with flow-through using an industry LSR format that is superior to the mechanized ordering capabilities that BellSouth provides to itself. (page 29) Instead, the Authority should only monitor the activities of the Georgia Flow Through Task Force. The cost of mechanizing new products will be past onto the CLECs. The ordering process for complex services is substantially the same for CLECs and BellSouth retail.	c. BellSouth has asked the Authority to essentially take a back seat to the Georgia Commission in addressing the lack of flow-through that affects Tennessee consumers' ability to gain from the development of competition. The fact remains that BellSouth retail utilizes and benefits from flow-through of almost 100% of its retail orders. Information contained in BellSouth's motion for reconsideration supports this as well. BellSouth goes through the painful processes needed to provision Centrex services. The painful processes outlined by BellSouth, however, amounts to no more than pre-order activities (compiling information to place the order). These processes do not consist of ordering activities. After the information is gathered, BellSouth retail enters information into the retail ordering system, ROS, whereas, the CLEC would have to fax the information to BellSouth LCSC to be re-entered into DOE or SONGS. The extra delays and human errors associated with the manual CLEC order places the CLEC at a competitive disadvantage. The CLEC Coalition applauds the Authority's interest in increasing mechanization that allows CLECs to operate more efficiently and effectively with BellSouth. BellSouth's notion that the Authority is requiring superior mechanized ordering capabilities than BellSouth provides to itself is irrational and not supported by fact.
% Rejected Service Request(Detail) % a. The Authority has ordered disaggregation into 31 product types. This large level of product disaggregation (as noted earlier, Georgia only has 7) creates a	a. On the contrary, BST has 24 levels of disaggregation for this measure for SQM reporting Even though BST states that Resale PBX and Resale Centrex are included in Resale Design, Resale

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, and UCL (short & long) categories. The overlap is significant because a single LSR reject could be counted multiple times thereby distorting the metric.(page 32) b. The EELs Dispatch category is not relevant to the ordering(p.33)	PBX, Resale Centrex & Resale Design are specified as separate levels of disaggregation in both the GA & FL plans. Additionally, those plans have Resale ISDN as a separate level of disaggregation. Additionally, the following levels of disaggregation ordered by the Authority, match BST's current level of disaggregation: • Resale PBX • Resale Centrex • Resale Design If overlap exists, as conveyed by BST, BST's reporting for this measure would be invalid in GA & FL.As for the xDSL products, the CLECs are seeking disaggregation of the two-wire and four-wire categories into the specific DSL products they order. If there are truly no remaining products left in these categories when done, then BST may eliminate the general for the more specific DSL product categories. b. CLECs are concerned that the EELs dispatch (new EELs orders) would have longer FOC intervals than EELs migrations from Special Access. The disaggregation, therefore, is appropriate.
Reject Interval a. 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, and UCL(short & long) categories. The overlap is significant because a single LSR reject could be counted multiple times thereby distorting the metric.(page 33) b. The benchmarks conflict with the Authority's stated goal of adopting benchmarks that represent the most stringent benchmark that has been adopted in other BST states. In this instance, the Authority has adopted a benchmark for partially mechanized LSRs of 95% in five hours, which is more stringent than 95% in	a. The comments specified for % Rejected Service Requests apply to this measure. b. The CLEC Coalition witness ,Tad Sauder, presented rebuttal testimony (rebuttal testimony and attachments TJS1 and TJS2) that indicates BellSouth was operating very close to the five-hour benchmark for rejects at the time of the hearing. Current BellSouth performance also supports the fact that BellSouth is very close to operating at the ordered levels (see attachment 1 with current performance). BellSouth's argument is not based on fact that they cannot meet the ordered benchmarks.. The Georgia current working

ten hours standard adopted by the FL Commission.(page 33)	document, from the GA 6-Month Review, currently has the partially mechanized FOCs to be returned within 5 hours 90% of the time. The 95% in 5 hours standard currently is what applies for partially mechanized orders in the SBC region and BellSouth has not explained why it is not capable of meeting this standard that provides the dependability the CLECs need in informing their customers of due dates. .
FOC Timeliness a. The Authority has ordered disaggregation into 31 product types. this large level of product disaggregato(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, and UCL(short & long) categories. The overlap is significant because a single LSR reject could be counted multiple times thereby distorting the metric.(page 34) b. The Authority should modify the Benchmark provisions of this metric and adopt a benchmark of no higher than 95% in ten hours for partially mechanized LSRs and 95% in 3 hours for fully mechanized LSRs.(page 34) c. There is an issue with correlation between this metric and Average Completion Interval/Order Completion Interval Distribution metric. In this instance, correlation means that each of these metrics have an FOC component that	a. The comments, relating to disaggregation, specified for % Rejected Service Requests apply to this measure. b. The Georgia current working document(6-Month Review) currently has the partially mechanized FOCs to be returned within 5 hours 90% of the time. The CLEC Coalition witness Tad Sauder presented rebuttal testimony (rebuttal testimony and attachments TJS1 and TJS2) that indicate BellSouth was operating very close to the five-hour benchmark for FOCs at the time of the hearing. Currently, BellSouth is meeting the Authority ordered benchmark of one hour for fully mechanized LSRs and is still very close to the five-hour partially mechanized benchmark (see attachment 2). BellSouth's argument is not based on fact that they cannot meet the ordered benchmarks c. BellSouth's argument is only partially correct. While BellSouth correctly points out that the FOC timeframe is included in TN-P-6 and TN-P-7, BellSouth implies that if they miss the FOC benchmark, they will have to pay penalties twice. This is simply not the case. BellSouth would only have to pay penalties if BellSouth missed the FOC benchmark by such a margin that it affects the CLEC ability to provide services to the end user in parity with BellSouth retail.

are being measured and reported. This is significant because each of the metrics have penalties associated with them which means that BST would be penalized 3 times for failing to return a timely FOC.(page 34)	Further, the OCI measurement is reported as an average. To invoke payments on the same FOC failure twice, BellSouth's failures on the FOC measurement would have to be so systemic and severe that they increase the CLEC OCI average. This possibility is further remote due to the fact that the OCI measurement is reported in days, whereas the FOC measurement has a business hour benchmark . BellSouth also fails to address the fact that the CLEC and its end users are affected in two completely different ways. The CLEC can disappoint, inconvenience and eventually lose a customer at many stages of the ordering process and remedies should be due if any of those juncture points make the CLEC's service look inferior to the customer. First, if the CLEC cannot provide end users with timely committed due dates (the FOC date), the end user can certainly get a committed due date from BellSouth retail in a matter of minutes. Second, if BellSouth takes on average longer to provision the CLECs orders than the comparable retail orders, the CLEC is further placed at a competitive disadvantage. Both the SBC and the Verizon performance plans measure and remedy similar to the Authority's order plan
FOC/Reject Completeness a. The Authority has ordered disaggregation into 31 product types. this large level of product disaggregato(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, and UCL(short & long) categories. The overlap is significant because a single LSR reject could be counted multiple times thereby distorting the metric.(p.35)	a. The comments, relating to disaggregation, specified for % Rejected Service Requests apply to this measure.
Speed Of Answer In Ordering Center a. 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	a. Similar to many of the TX metrics, this metric includes a limit on the "tail" of how much longer the 5% calls answered in longer than 20 minutes should be allowed to exceed the benchmark. It has to have 95% or more answered in 20 seconds and none answered in longer than 30 seconds to comply or pay remedies on the number of calls beyond 5% with answer times greater than 20 seconds or if it

in two misses. This, in turn, could result in BST paying double penalties on a single call.(page 36)	meets this standard, the calls exceeding 30 seconds no matter how many made the 20 second standard.
Mean Held Order Interval & Order Completion Interval Distribution a. The Authority has ordered dissagregation into 36 product types(20 of which are either new or revised definitions of existing product groups). This large level of product disaggregation(as noted earlier, Georgia only as 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.(page 37) b. The closest retail analog BST has to an EEL is a retail DS1/DS3 interoffice, which is the retail analog being used by the FL Commission for a similar.(page 37) c. 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 designed digital product for which the Authority has established a retail analog of a nondesign product. The Authority should adopt a retail analog similar to the GA Commission of a retail digital loop less than DS1.(page 37)	a. BST incorrectly represents the level of disaggregation for this metric in GA. There are 26 levels of disaggregation for this measure in the GA SQM. If BST correctly states that Resold Design product category overlaps with Resold PBX, Resold Centrex/Centrex-like, Resold BRI and Resold PRI ISDN, BST's reporting in GA & FL is flawed. In both states, BST specified Resale PBX, Resale, Centrex & Resale ISDN as different levels of disaggregationn. b. CLEC support Retail DS1/DS3 Loops (not interoffice facilities) as the retail analog. Currently, FL ordered this retail analog and the "working document" from the GA 6-Month Review also supports this retail analog. The discussion of the settlement agreements for this retail analog is in the attached document. See Attachment 3. c. CLECs support the retail analog suggested by BST.
Average Jeopardy Notice Interval % of Orders Given Jeopardy Notice a. The same product and retail analog disaggregation issues identified in metric TN-P-1(Means Held Order Interval & Order Completion Interval Distribution) are present in this metric as well.	a. BST incorrectly represents the level of disaggregation for this metric in GA. There are 26 levels of disaggregation for this measure in the GA SQM. If BST correctly states that Resold Design product category overlaps with Resold PBX, Resold Centrex/Centrex-like, Resold BRI and Resold PRI ISDN, BST's reporting in GA & FL are flawed. In both states, BST specified Resale PBX, Resale, Centrex & Resale ISDN as different levels of disaggregationn. CLEC support Retail DS1/DS3 Loops as the retail analog. Currently, FL ordered this retail analog and the "working document" from the GA 6-Month Review also supports this retail analog. The discussion of the settlement agreements for this retail analog is in the attached document. CLECs support the retail analog suggested by BST.

Percent Missed Installation Appointment The same product and retail analog disaggregation issues identified in metric TN-P-1(Means Held Order Interval & Order Completion Interval Distribution) are present in this metric as well.(page 38) b. There is a discrepancy within the Business Rules provision that needs to be remedied. This metric purports to measure BST's ability to meet its due date commitments, which are defined as "any time on the confirmed due". However, the Authority has a notation about CLEC-ordered, time-specific appointments being included in this metric.(page 38)	BST incorrectly represents the level of disaggregation for this metric in GA. There are 26 levels of disaggregation for this measure in the GA SQM. If BST is correctly stating that Resold Design product category overlaps with Resold PBX, Resold Centrex/Centrex-like, Resold BRI and Resold PRI ISDN, BST's reporting in GA & FL are flawed. In both states, BST specified Resale PBX, Resale, Centrex & Resale ISDN as different levels of disaggregationn. CLEC support Retail DS1/DS3 Loops as the retail analog. Currently, FL ordered this retail analog and the "working document" from the GA 6-Month Review also supports this retail analog. The discussion of the settlement agreements for this retail analog is in the attached document. CLECs support the retail analog suggested by BST. b. CLECs do not view the Business Rule as ambiguous. The Authority clearly states that the appointment time is significant where the CLEC has ordered time-specific service delivery.
Percent Completions/Attempts Without Notice or With Less Than 24 Hours Notice The same product and retail analog disaggregation issues identified in metric TN-P-1 (Mean Held Order Interval & Order Completion Interval Distribution) are present in this metric as well.(page 39)	BST incorrectly represents the level of disaggregation for this metric in GA. There are 26 levels of disaggregation for this measure in the GA SQM. If BST is correctly stating that Resold Design product category overlaps with Resold PBX, Resold Centrex/Centrex-like, Resold BRI and Resold PRI ISDN, BST's reporting in GA & FL are flawed. In both states, BST specified Resale PBX, Resale, Centrex & Resale ISDN as different levels of disaggregationn. CLEC support Retail DS1/DS3 Loops as the retail analog. Currently, FL ordered this retail analog and the "working document" from the GA 6-Month Review also supports this retail analog. The discussion of the settlement agreements for this retail analog is in the attached document. CLECs support the retail analog suggested by BST. See Attachment 3.
Average Completion Interval Order Completion Interval Distribution a. The same product and retail analog disaggregation issues identified in metric TN-P-1(Means Held Order Interval &	BST incorrectly represents the level of disaggregation for this metric in GA. There are 26 levels of disaggregation for this measure in the GA SQM. If BST correctly states that Resold Design product category overlaps with Resold PBX, Resold Centrex/Centrex-like,

Order Completion Interval Distribution) are present in this metric as well.(p.39) b. These metrics both measure the installation interval, just by different yardsticks. Thus, BellSouth would be penalized twice for the same performance failure.(p.39) c. 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. (page 40) d. 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. e. 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.	Resold BRI and Resold PRI ISDN, BST's reporting in GA & FL are flawed. In both states, BST specified Resale PBX, Resale, Centrex & Resale ISDN as difference levels of disaggregationn. CLEC support Retail DS1/DS3 Loops as the retail analog. Currently, FL ordered this retail analog and the "working document" from the GA 6-Month Review also supports this retail analog. The discussion of the settlement agreements for this retail analog is in the attached document. CLECs support the retail analog suggested by BST. b. The Authority could address potential correlation using the methodology proposed in the CLEC Performance Incentive Plan. If both measures were designated as being in the same family of enforcement measures, penalties would only be incurred once if both measures failed or once if either one of the 2 measures failed. c. Given that this is a parity measure, BST's suggestions relating to increase of provisioning interval to accommodate the additional ordering(FOC portion) is inappropriate. d. According to the Authority, the average completion interval measure monitors the time it takes BST to provide service for the CLEC or its own customers. The measure is intended to capture the customer experience. The interval from customer request to disclosure of a due date is part of the customer experience. e. BST's explanation is apparently incomplete.
Average Completion Notice Interval The same product and retail analog disaggregation issues identified in metric TN-P-1(Means Held Order Interval & Order Completion Interval Distribution) are present in this metric as well.(page 41)	BST incorrectly represents the level of disaggregation for this metric in GA. There are 26 levels of disaggregation for this measure in the GA SQM. If BST is correctly stating that Resold Design product category overlaps with Resold PBX, Resold Centrex/Centrex-like, Resold BRI and Resold PRI ISDN, BST's reporting in GA & FL are flawed. In both states, BST specified Resale PBX, Resale, Centrex & Resale ISDN as different levels of disaggregationn. CLEC support Retail DS1/DS3 Loops as the retail analog. Currently, FL ordered this retail analog and the "working document" from the GA 6-Month Review also supports this retail analog. The

	discussion of the settlement agreements for this retail analog is in the attached document. CLECs support the retail analog suggested by BST. See Attachment 3.
Coordinated Customer Conversion Interval a. The same product and retail analog disaggregation issues identified in metric TN-P-1(Means Held Order Interval & Order Completion Interval Distribution) are present in this metric as well.(page 41)	a. BST incorrectly represents the level of disaggregation for this metric in GA. There are 26 levels of disaggregation for this measure in the GA SQM. If BST correctly states that Resold Design product category overlaps with Resold PBX, Resold Centrex/Centrex-like, Resold BRI and Resold PRI ISDN, BST's reporting in GA & FL are flawed. In both states, BST specified Resale PBX, Resale, Centrex & Resale ISDN as difference levels of disaggregationn. CLEC support Retail DS1/DS3 Loops as the retail analog. Currently, FL ordered this retail analog and the "working document" from the GA 6-Month Review also supports this retail analog. The discussion of the settlement agreements for this retail analog is in the attached document. CLECs support the retail analog suggested by BST. See Attachment 3
b. The only product for which coordinated customer conversions are done is UNE loops. All other product disaggregation is not necessary for this metric and should be removed.(page 41)	b. CLECs support the BST recommendation. See Attachment 3.
Percent Timely Loop Modification/De-Conditioning on xDSL Loops The Authority should also consider incorporating this metric into the TN-P-6 (Average Completion Interval) metric as did the FL Commission.(page 41)	CLECs are not opposed to reporting this as a separate metric or as two additional disaggregations (loops with and loops without conditioning) in the Average Completion Interval metric.
Percent Provisioning Troubles Within 30 Days of Service Order Activity Completions The same product and retail analog disaggregation issues identified in metric TN-P-1 (Means Held Order Interval & Order Completion Interval Distribution) are present in this metric as well.(page 42)	BST incorrectly represents the level of disaggregation for this metric in GA. There are 26 levels of disaggregation for this measure in the GA SQM. If BST is correctly stating that Resold Design product category overlaps with Resold PBX, Resold Centrex/Centrex-like, Resold BRI and Resold PRI ISDN, BST's reporting in GA & FL are flawed. In both states, BST specified Resale PBX, Resale, Centrex & Resale ISDN as different levels of disaggregationn. CLEC support Retail DS1/DS3 Loops as the retail analog. Currently, FL ordered this retail analog and the "working document" from the GA 6-Month Review also supports this retail analog. The discussion of the settlement agreements for this retail analog is in the

	attached document. CLECs support the retail analog suggested by BST. See Attachment 3.
Service Order Accuracy(SOA) a. The same product and retail analog disaggregation issues identified in metric TN-P-1 (Means Held Order Interval & Order Completion Interval Distribution) are present in this metric as well.(page 42)	a. The disaggregation ordered by the TRA will not result in any reporting redundancies. CLEC support Retail DS1/DS3 Loops as the retail analog. Currently, FL ordered this retail analog and the "working document" from the GA 6-Month Review also supports this retail analog. The discussion of the settlement agreements for this retail analog is in the attached document. CLECs support the retail analog suggested by BST. See Attachment 3.
b. Although the SOA result may vary slightly from state to state because of 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.(page 43) 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.(page 43)	b. BST has not presented factual data to support that the SOA performance specific to TN is comparable to that of the BST Region. Therefore, aggregating results at the region level could mask TN specific results. There are state differences in products, regulatory requirements such as Caller ID blocking, where there may be more mistakes occurring in one state versus another. State specific reporting is critical and this is one BST was able to report to the FCC with its 271 application for GA and LA specifically. The Authority has ordered assessment of statistically valid samples of orders from TN.Consequently, BST's concern is invalid. The Authority was correct in ordering TN-specific data given that there is evidence that SOA for a state differs from the regional results. The only state-level data that BellSouth has released showed a systematically higher SOA error rate in Georgia than in other states for each of the five months reported. (see paragraph 5, Supplemental Declaration of Robert M. Bell, CC Docket No. 02-35).
c. 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.(page 44)	c. The disaggregation changes could contribute to a need for more time. However, 90 days should be the maximum time allowed for measure modifications. This is typical of what has been allowed in other states such as GA & FL. Further, BellSouth has filed "prior" notification of "proposed" metrics changes in Georgia in Docket 7892 U on May 23, 2002 with the intent to implement on May 31. It subsequently filed additional "prior" notification of "proposed" changes on June 4, which were implemented on June 5, 2002. Given the speed with which BellSouth can provide "prior" notice to "proposed" changes and subsequently implement those changes in that docket, the Authority's timeline, if even if for more complex changes, should certainly be adequate for BellSouth.

Percentage of Time the Old Service Provider Releases the Subscription Prior to the Expiration of the Second 9-Hour Timer BST requests that the Authority reconsider its requirement that this metric be implemented immediately and instead give BST 180 days in which to implement this metric.(page 44)	The Authority did not specify that the measure be implemented immediately. The Authority gave BST 90 days.
LNP-Percent Missed Installation Appointments a. BST submits that the Authority should reconsider the disaggregation on this metric and deletes the 36 products currently listed and substitute in their place the LNP stand-alone product.(page 45)	a. CLECs agree with the disaggregation proposed by BST for this measure.
Invoice Accuracy a. BST submits that the Authority should modify the retail analogs to be parity with retail.(page 45)	a. CLECs agree with the retail analog modification proposed by BST.
Mean Time To Deliver Invoices The Authority should modify the retail analogs to be at parity with retail(CRIS and CABS)(page 46)	a. CLECs agree with the retail analog modification proposed by BST.
Percent Billing Errors Corrected in X Days a. BST would request that the Authority substitute those two metrics, as agreed by the parties in FL and GA, in place of metric B-3(Percent Billing Errors Corrected in X Days.(page 46)	a. CLECs agree with the substitution of measures and for this measure. The CLECs are willing to use the benchmarks in the substituted measures until the next Tennessee review where they would expect that stricter ones would be considered. BST must also provide CLEC specific reporting for coverage in the Tier I remedies.
Usage Data Delivery Completeness Usage Data Delivery Timeliness Mean Time to Deliver Usage a. BST 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 BST messages processed and transmitted via CMDS. BST requests that the Authority modify the Report Structure provisions to remove the requirements for BST aggregate data.(page 47) b. A penalty of $1.00 per record(20 times the value of the delay) far outweighs any reasonable damage that might result form a delay in sending usage records to the CLEC & is, therefore, punitive.(page 47)	a. CLECs agree with deletions proposed by BST. b. CLECs need to receive usage data that is timely, accurate and complete. BST continues to underestimate the value of losing a customer due to a CLEC providing poor customer service(i.e. incomplete billing, billing errors).
Recurring Charge Completeness a. The same product disaggregation and retail analog issues identified in metric Invoice Accuracy are present in this metric as well. Necessary modification to resolve problems with metric Invoice Accuracy for CLEC product level disaggregation should	a. CLECs agree with the retail analog modification proposed by BST.

also be made in this metric.(page 49)	
Non-Recurring Charge Completeness a. The same product disaggregation and retail analog issues identified in metric Invoice Accuracy are present in this metric as well. Necessary modification to resolve problems with metric Invoice Accuracy for CLEC product level disaggregation should also be made in this metric.(page 49)	a. CLECs agree with the retail analog modification proposed by BST.
Missed Repair Appointment a. The Authority has ordered dissagregation into 31 product types(20 of which are either new or revised definitions of existing product groups). This large level of product disaggregation(as noted earlier, Georgia only as 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.(page 50)	a. BST incorrectly represents the level of disaggregation for this metric in GA. There are 19 levels of disaggregation for this measure in the GA SQM. If BST correctly states that Resold Design product category overlaps with Resold PBX, Resold Centrex/Centrex-like, Resold BRI and Resold PRI ISDN, BST's reporting in GA & FL are flawed. In both states, BST specified Resale PBX, Resale, Centrex & Resale ISDN as difference levels of disaggregation.
b. There are other problems in the product disaggregation that also need to be rectified. The LNP product category needs to be removed from the disaggregation because once a number has been ported the records are not retained in BST's maintenance OSS, and any troubles associated with it are the responsibility of either the CLEC or the NPAC.(page 50)	b. CLECs agree with the deletion proposed by BST.
c. The Enhanced Extended Loops(EELs)) "Dispatch category should be removed because in maintenance it is irrelevant whether a dispatch is involved.(page 50)	A level of disaggregation called "EELs" is still required. BST has not explained why there would not be dispatched repairs for EELs.
d. The Special Access to EELs Conversion product category should be deleted as it applies only to the ordering and provisioning processes.	d. CLECs agree with BST's proposal.
e. The Commission should change the benchmark to parity with retail	e. Should the Authority decided that this will be a benchmark measure, the CLECs agree to the 1% benchmark.
f. 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)	f. It was appropriate for the Authority to remove the exclusions. CLECs did not agree with BST's recommendation to exclude troubles coded "No Trouble Found". CLECs raised continuing concern about trouble tickets that are closed prematurely as "No Trouble Found". BST now independently code trouble reports with disposition codes 7, 8 & 9 in LMOS or NTF in WFA without the CLECs having access to the reports to validate accurate coding.

Customer Trouble Report Rate a. The same issues identified in metric Missed Repair Appointments are present in this metric as well. Necessary modifications required to resolve the problems in metric Missed Repair Appointment should also be made in this metric.(page 51)	a. CLEC responses for metric Missed Repair Appointment apply to this measure.
Maintenance Average Duration a. The same issues identified in metric Missed Repair Appointments are present in this metric as well. Necessary modifications required to resolve the problems in metric Missed Repair Appointment should also be made in this metric.(page 52)	a. CLEC responses for metric Missed Repair Appointment apply to this measure.
Percent Repeat Troubles Within 30 Days a. The same issues identified in metric Missed Repair Appointments are present in this metric as well. Necessary modifications required to resolve the problems in metric Missed Repair Appointment should also be made in this metric.(page 52)	a. CLEC responses for metric Missed Repair Appointment apply to this measure.
Out of Service(OSS) >24 Hours a. The same issues identified in metric Missed Repair Appointments are present in this metric as well. Necessary modifications required to resolve the problems in metric Missed Repair Appointment should also be made in this metric.(page 52)	a. CLEC responses for metric Missed Repair Appointment apply to this measure.
Average Answer Time a. The 2 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 and Tier 2 enforcement mechanism.(page 53)	a. Similar to many of the TX metrics, this metric includes a limit on the "tail" of how much longer the 5% calls answered in longer than 20 minutes should be allowed to exceed the benchmark. It has to have 95% or more answered in 20 seconds and none answered in longer than 30 seconds to comply or pay remedies on the number of calls beyond 5% with answer times greater than 20 seconds or if it meets this standard, the calls exceeding 30 seconds no matter how many made the 20 second standard..
Collocation Percent of Due Dates Missed a. The Authority should reconsider its benchmark and adopt the 95% standard.(page 54)	a. Collocations have such long intervals, that the 100% standard, such as California has adopted, is reasonable for this critical network interconnection point for CLEC market entry and expansion.
Average Database Update Interval a. The Authority should remove the benchmark and instead indicate that this metric is a parity by design metric.(page 54)	a. This measure has not been certified as "parity by design" by an independent auditor.
Many of the Authority's metrics are correlated such that a single performance failure results in penalties being paid under	Until an industry-developed correlation analysis can be conducted, any determination regarding the correlation between measures is

multiple metrics.(p.55)	merely a guess. If there are reasons to believe that measurements are somewhat overlapping and correlation is suspected, the solution is not to immediately eliminate one or both measurements. Rather the potentially superior approach is to create "families" for the purpose of applying consequences. Each measurement "family" would be eligible for only a single consequence. Whether and to what degree a family is eligible for a consequence would be determined by the worst performing individual measurement result within the family for the month under consideration. Thus, use of measurement families eliminates the possibility of consequence "double jeopardy" without making any advance value judgment regarding the usefulness of individual measurements.

CONCLUSION

For these reasons, BellSouth's Motion for Reconsideration should be denied.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Henry Walker

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P.O. Box 198062
Nashville, Tennessee 37219
(615) 252-2363

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via facsimile or hand delivery, to the following on this the 6th day of June, 2002.

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Henry Walker

Henry Walker

Report: Reject Interval Partially Mech SQM (Reg)

			March 2002							
Aggregate	Region	Ordering Products	0 - <=1 hr	>1 - <=4 hrs	>4 - <=8 hrs	>8 - <=10 hrs	0 - <=10 hrs	>10 - <=18 hrs	0 - <=18 hrs	>18 - <=24 hrs
CLEC	Region	Resale Residence	15.88%	13.76%	30.52%	22.65%	82.80%	15.93%	98.73%	0.52%
		Resale Business	19.11%	31.97%	38.32%	5.65%	95.05%	3.12%	98.17%	0.75%
		Resale PBX				20.00%	20.00%		20.00%	20.00%
		Resale ISDN								100.00%
		2W Analog Loop Non-Design	1.58%	4.73%	43.85%	22.40%	72.56%	17.35%	89.91%	3.47%
		2W Analog Loop Design	2.52%	19.65%	45.59%	16.88%	84.63%	9.57%	94.21%	1.26%
		UNE Loop + Port Combinations	24.60%	29.51%	37.58%	6.34%	98.03%	1.31%	99.34%	0.23%
		UNE ISDN	1.06%	34.92%	44.44%	8.47%	88.89%	1.06%	89.95%	1.06%
		UNE Line Sharing	1.37%	33.33%	46.45%	5.74%	86.89%	7.65%	94.54%	2.19%
		UNE Other Design (Ordering)	9.97%	29.24%	41.53%	14.29%	95.02%	3.32%	98.34%	0.66%
		UNE Other Non-Design	7.54%	20.01%	44.82%	21.63%	94.00%	5.12%	99.12%	0.33%

Report: FOC Timeliness Partially Mech SQM (Reg)

			March 2002								
Aggregate	Region	Ordering Products	0 - <=4 hrs	>4 - <=8 hrs	>8 - <=10 hrs	0 - <=10 hrs	>10 - <=18 hrs	0 - <=18 hrs	>18 - <=24 hrs	0 - <=24 hrs	> < H
CLEC	Region	Resale Residence	26.15%	34.89%	21.44%	82.48%	15.69%	98.17%	0.57%	98.73%	(
		Resale Business	40.05%	44.95%	8.29%	93.29%	4.39%	97.69%	0.46%	98.15%	1
		Resale PBX		16.67%	16.67%	33.33%	16.67%	50.00%		50.00%	3
		Resale ISDN							12.50%	12.50%	5
		2W Analog Loop Non-Design	19.73%	51.72%	21.66%	93.11%	6.24%	99.35%	0.22%	99.57%	(
		2W Analog Loop Design	31.12%	42.35%	16.79%	90.27%	7.91%	98.18%	0.96%	99.14%	(
		UNE Loop + Port Combinations	45.90%	41.57%	8.44%	95.91%	2.55%	98.46%	0.63%	99.09%	(
		UNE ISDN	30.88%	55.15%	5.70%	91.73%	1.56%	93.29%	0.74%	94.03%	1
		UNE Line Sharing	25.68%	67.57%	3.60%	96.85%	1.13%	97.97%	0.23%	98.20%	1
		UNE Other Design (Ordering)	28.16%	46.80%	15.92%	90.87%	6.41%	97.28%	0.97%	98.25%	(
		UNE Other Non-Design	20.32%	50.94%	22.11%	93.37%	6.18%	99.55%	0.22%	99.77%	(

Henry Walker - FW: Analog Proposal

From: Karen Kinard <karen.kinard@wcom.com>
To: Susan Berlin <susan.berlin@wcom.com>, Cheryl Bursh <cbursh@att.com>, 'Henry Walker' <hwalker@bccb.com>
Date: 06/06/2002 2:03 PM
Subject: FW: Analog Proposal

-----Original Message-----
From: Coon, Dave [mailto:Dave.Coon@bellsouth.com]
Sent: Tuesday, January 08, 2002 3:35 PM
To: karen.kinard@wcom.com
Subject: RE: Analog Proposal

Karen -
Your proposal for line splitting and for EELs is acceptable. I thought our charge from Lisa was to work out an agreement in line SPLITTING, not line sharing. I thought we had agreement on the latter but needed to talk about Line Splitting since it is a new disaggregation. In any event, the products and processes for line splitting and line sharing are so similar that "ADSL provided to Retail" which is our proposed retail analog, is applicable to both.
As for EELs, yes, 'Retail DS1/DS3' is also an acceptable retail analog for both the Provisioning and Maintenance and Repair categories of measurements. Since EELs is a new product disaggregation and since we don't have a lot of data, Retail DS1/DS3 is good until we have the next review.
Thanks for coordinating this proposal among the ALECs.
Dave

-----Original Message-----
From: Karen Kinard [mailto:karen.kinard@wcom.com]
Sent: Tuesday, January 08, 2002 2:16 PM
To: Cheryl Bursh; Dave Coon
Subject: Analog Proposal

I left a message with Mike, but per Lisa Harvey's request that we compromise ASAP on line sharing and EELs.

Could you agree to using your retail analog for line sharing and ours for EELs (DS1/DS3 loops) until the next six month reviews when we would reevaluate. I think both are fairly low activity in Florida.

ATTACHMENT 4

AAA WISE EXPRESS, INC.

Plaintiff-Appellant

VS

FRANK D. COCHRAN, KEITH BISSELL and Z. D. ATKINS, Constituting the TENNESSEE PUBLIC SERVICE COMMISSION

Defendant-Appellee

DAVIDSON EQUITY

OPINION

Appellant AAA Wise Express, Inc. filed an application with appellee Tennessee Public Service Commission (Commission) requesting that a Certificate of Convenience and Necessity be issued authorizing it to operate as a common carrier by motor vehicle over regular routes to transport general commodities between Nashville, Tennessee, and Memphis, Tennessee, and serving Jackson, Tennessee, and certain other intermediate and off-route points.

The application was heard before the full Commission on July 23, 24 and 25, 1979, and May 5, 6 and 7, 1980, and June 9, 1980. On September 16, 1981, the Commission, at a meeting mandated by T.C.A. § 8-44-101, et seq. (Public Meetings Act), voted to deny the application. The action of the Commission in denying the application was appealed to the Chancery Court for Davidson County. The Chancellor entered an order affirming the Commission's decision and, from that order, this appeal ensued.

Appellant was organized to conduct a motor carrier operation between Nashville and Memphis and was at the time of the Commission hearing a nonoperating motor carrier.

In this Court appellant has challenged the Commission's decision on both substantive and procedural grounds. It is

appellant's insistence that the Commission's order is not supported by evidence in the record, is internally inconsistent, and that the Commission's decision making process violated the Public Meetings Act (T.C.A. § 8-44-101, et seq.).

Appellant first asserts that the actions of the Commission in denying its application "were arbitrary, capricious or characterized by an abuse of discretion." In support of this contention, appellant argues that the Commission's order "is internally inconsistent and unsupported by evidence which is both material and substantial" in that the order finds that the traffic lanes over which it proposed to operate are the busiest in the state but also that there is a lack of available freight for appellant to transport in the involved traffic lanes. Under the circumstances of this case, we find nothing inconsistent in the Commission's finding. The finding that a particular traffic lane is one of high volume is not in and of itself inconsistent with a finding that appellant does not demonstrate that it would receive a sufficient share of the traffic to make its proposed application economically feasible.

Some twenty-three public witnesses and one motor carrier witness testified in support of appellant's intrastate application. The Commission found that the volume of freight which would be generated by these witnesses was "quite small" and that it was unlikely that the supporting shippers would be in a position to tender appellant more than a trailer load of LTL freight in either direction on any given day. The Commission further found that the number of supporting witnesses testifying on behalf of appellant was too small to be representative of the needs of the public. The Commission from these findings concluded that the volume of freight the supporting shippers could tender to appellant would not "justify . . .[appellant's] proposal to render a daily, overnight service on LTL freight . . . economically feasible."

We find nothing in the record to buttress appellant's assertion that the Commission had to engage in "sheer speculation" to conclude that appellant would not receive its "representative portion" of the freight.

We likewise fail to find support for appellant's contention that the Commission's order was inconsistent in finding that appellant would not be able to "generate sufficient freight to operate" and then concluding that "grant[ing appellant's] application would divert so much of protesting carriers' traffic to have a material adverse effect upon existing carriers."

The Commission's finding is this regard is as follows:

> The most significant factor which we must consider is the public demand or need for Applicant's proposed service. The public need and the public interest is our predominant consideration. We have already discussed above our considerations in this respect. Because present service is found to be reasonably adequate; because Applicant has failed to make a representative showing of a need for the new service proposed or that a sufficient amount of freight will be generated by Applicant to make its proposal economically feasible; and because of the adverse effect a grant of this application is likely to have on existing carriers, if Applicant in fact is able to compete successfully, we conclude that Applicant has failed to carry its burden of proof of showing a need for the service proposed and that such a service would be in the public interest.

Further;

> We have considered the effect of a grant of the proposed authority on presently existing carriers and have concluded that, if Applicant were in fact able to compete successfully, this would likely result in material harm to presently existing carriers.

As can readily be seen, the Commission found that appellant had not proved that it could generate sufficient traffic to make its operation economically feasible but that even if appellant were able to do so, it would "result in material harm to presently existing carriers." We find nothing inconsistent in the Commission's finding that appellant failed to carry its burden of proof of showing that it can do as it proposed and to further find that even if it had proved that it could generate

sufficient traffic, it would result in material harm to existing carriers.

T.C.A. § 4-5-109(7) provides that "[t]he agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence." The Commission properly exercised its developed expertise in determining that the public support received by appellant was not sufficiently representative for it to be properly determined that the public needs would best be served by granting appellant's application and that appellant had failed to prove it was likely to attract enough freight to make its proposal of overnight LTL service economically feasible.

We find nothing internally inconsistent with the Commission's order and we are of the opinion that the Chancellor properly affirmed the order.

Appellant also contends that the Chancellor erred in affirming "the Commission's order which ignored material and substantial evidence in that the yearly revenue increase of competitive carriers was not mentioned in the decision portion of the Commission's order. This fact simply was not considered by the Commission."

The Commission, on pages 17, 18 and 19 of its order in regard to intervening carriers' annual revenue increases, found as follows:

> From an operating ratio of 93.5, gross revenues of approximately $5.5 million and a profit margin of approximately $225,000.00 in 1976, Humboldt [Express, Inc.] has gone, in 1979, to gross revenues of $9,924,000.00, profits of $787,000.00 and an operating ratio of 87.2. The witness attributes the substantial portion of this growth to Humboldt's entry into the East Tennessee market not served in 1976. . . .
>
> Gallatin-Portland's traffic study shows consistent overnight service being rendered. During 1979 Gallatin-Portland's operating ratio was approximately 92 while revenues totaled approximately $2.6 million, up from 1976 revenues of $1.1 million. Gallatin-Portland did not receive its Memphis-Nashville-Jackson authority until March of 1979.

Further:

> From gross revenue of $1,473,238.00 in 1976, Jackson Express moved to $3,196,070.20 in 1979. In 1976 Jackson Express began the year under strike conditions persisting from the latter part of 1975.

Further:

> From revenues of $3.28 million in 1976 Robinson increased to revenues of $5.1 million in 1979 with much of that owing to the expansion of operations during the intervening years including the acquisition of additional territory between Memphis, Nashville and Jackson.

It is evident that the Commission did not ignore the evidence of growth and revenue of the intervening carriers. Appellant's conclusion that the growth of the intervening carriers was "in spite of new carriers entering into the traffic lane" is not borne out by the evidence and the Commission's findings.

There is evidence in the record that eleven carriers serve the Memphis-Nashville traffic corridor; that Humboldt Express, Inc's percentage of its total revenue derived from the Memphis-Nashville traffic has fallen in the last ten years from eighty percent to thirty percent; that the difference between Jackson Express's revenue in 1976 and its 1979 revenue is due to the fact that Jackson Express "began the year under strike conditions persisting from the latter part of 1975;" and that the increase in revenues of Robinson Freight Lines, Inc. was due to expansion of operations.

While growth and revenue on the part of intervening carriers is shown, the cause in growth of this revenue is shown, in large part, to be from sources other than increased traffic.

Appellant also contends that the Commission ignored evidence of future economic growth in Tennessee. We disagree. The Commission made specific findings of fact in regard to the evidence concerning the growth at Jackson and we find no evidence that the Commission ignored potential growth as a source of business for appellant.

Appellant next argues that the Chancellor "erred in affirming the decision of the Commission which placed an improper burden upon appellant."

Appellant argues that the portion of the Commission's order which states, "We have also concluded that the evidence fails to establish that the quality of service being rendered by presently existing carriers over the lanes of traffic here involved is inadequate," places an improper burden upon appellant.

T.C.A. § 65-15-107(a) provides, in part, as follows: "In determining whether or not a certificate of convenience and necessity should be issued, the commission shall give reasonable consideration to the transportation service being furnished by any railroad, street railroad or motor carrier on the route or in the territory in which the applicant proposes to operate, ..." The Commission is mandated by statute to consider "the transportation service being furnished . . . on the route or in the territory in which the applicant proposes to operate." Refiners Transport Co. v. Pentecost, 204 Tenn. 694, 325 S.W.2d 267 (1959). While the service being furnished is only one of the determining factors for the Commission to consider, it is a relevant consideration. And where, as in the instant case, appellant relies upon the inadequacy in existing service, the burden is upon appellant to establish such inadequate service.

Appellant next contends that the Chancellor erred in affirming "the Commission's decision which was made upon unlawful procedure" by failing to "read in pari materia, T.C.A. § 65-1507 (now 65-15-107) and T.C.A. § 8-44-101, et seq."

T.C.A. § 65-15-107(a) sets forth the relevant factors which the Commission is required to give consideration to in determining whether an application should be granted or denied. T.C.A. § 8-44-101, in part, states: "The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret."

It is appellant's contention that each of the factors enumerated in T.C.A. § 65-15-107 must be discussed by the Commission at the meeting mandated by T.C.A. § 8-44-101, et seq., and that the consideration of each of the factors must be spread upon the record. Appellant's insistence seems to be that unless members of the Commission each give their reasoning on each factor they must consider and that reasoning spread upon the minutes, the presumption is that the Commission did not give reasonable consideration to each factor enumerated. If this is not done then the Commission must have met at some other time and given consideration to these factors in violation of the "Public Meetings" Act. We find nothing in T.C.A. § 8-44-101, et seq., that mandates a discussion by the Commission. T.C.A. § 8-44-104(a) provides as follows:

> The minutes of a meeting of any such governmental body shall be promptly and fully recorded, shall be open to public inspection, and shall include but not be limited to a record of persons present, all motions, proposals and resolutions offered, the results of any votes taken, and a record of individual votes in event of roll call.

The intent of the Public Meetings Act is to preclude secret meetings of governmental bodies covered by the act and to assure that decisions of governmental bodies covered by the act will be arrived at in open meetings. T.C.A. § 8-44-101.

We find nothing in the record to show that the Commission did anything other than comply with the Public Meetings Act. Appellant has failed to in anywise show that the Commission violated the act. In the absence of evidence to the contrary, we must presume that the Commission followed the mandate of T.C.A. § 8-44-101, et seq.

Appellant also argues that the Commission order, entered after the meeting mandated by T.C.A. § 8-44-101, et seq., reflects consideration of the factors required to be considered pursuant to T.C.A. § 65-15-107(a), and since the Commission did not

discuss each of these in the public meeting, then it necessarily follows that the Commission must have met at some other time and that this meeting was in violation of T.C.A. § 8-44-101, et seq. Again, appellant offers no evidence of a violation, only its conclusion.

We find nothing either in the Public Meetings Act or in T.C.A. § 65-15-107 that requires each member of the Commission to voice his decision regarding the factors enumerated in 65-15-107(a). In the absence of evidence to the contrary, it will be presumed that the Commission followed the law and, after hearing the evidence offered by all parties in this case, applied the evidence to the mandated criteria and reached a decision based on the law and the evidence. Blue Ridge Transportation Co. v. Hammer, 203 Tenn. 393, 313 S.W.2d 431 (1958). The Commission's order is entitled to a presumption of correctness.

We agree with the Chancellor that there is substantial evidence to support the Commission's findings and that the findings are not arbitrary or capricious. We are further of the opinion that the Commission's decision was not made upon unlawful procedure and that there was no violation of T.C.A. § 8-44-101, et seq.

The judgment of the Chancellor is affirmed with costs to appellant and the cause remanded for the collection of costs and any further necessary proceedings.

Samuel L. Lewis

SAMUEL L. LEWIS, Judge

CONCUR

Henry F. Todd

HENRY F. TODD, Presiding Judge, M.S.

Lewis H. Conner, Jr.

LEWIS H. CONNER, JR., Judge